Vol. V

TRANSCRIPT OF RECORD

(Pages 1669 to 2084)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 48

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

No. 64

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 26, 1945.
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IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 5648, 5546.

ROOT REFINING COMPANY,
Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

TRANSCRIPT OF RECORD

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Q. Does the block sheet that you have before you, Government's Exhibit 42, show all the checks cashed by you on May 8, 1936? A. Yes.

Q. And there are three separate sheets, are there not, sir? A. There are.

Q. Now, did you at my request produce with you the Recordak pictures of the checks reflected by your block sheets, sir? A. I have.

Q. And they are presently in court? A. They are.

Q. Have you at some prior occasion examined those Recordak pictures to determine the exact nature of each check appearing on your block sheet? A. Not each check, Mr. Gahagan. 5006

Q. Each check over a certain amount? A. Yes.

Q. And over what amount, sir? A. Over $1,000.

Q. Of $1,000 and over? A. Yes.

Q. So that the jury may understand, will you explain what the Recordak of these checks consist of? In other words, what a Recordak is? A. A Recordak is a large machine taking pictures of each individual check as it is individually put through this camera, you might say. It records it on a roll and those pictures are run through on this roll until a certain number of them are taken, and then it is changed from one day to another—this same roll might run several days, such as the date I have here—it runs from May 7, 1936, to May 12, 1936. 5007

Q. Would that roll that you have in your hand include all of the checks that you cashed during that period? A. Yes.

Q. As well as other checks at the bank? A. As well as checks paid through the clearing.

Q. The clearing?

Mr. Gray: If the witness is using the Recordak sheets I would like to see them.

Mr. Gahagan: The Recordak film used, with the original records, would be available in court.

5008 *Earl E. Scivell—For Amici Curiae—Redirect*

By Mr. Gahagan:

Q. Now, did you say you personally, yourself, ever examined, pardon me, sir.

The Court: All right.

By Mr. Gahagan:

Q. Did you yourself ever examine the Recordak films, sir? A. I have.

Q. And for that purpose, did you use the projection ma-
5009 chine? A. Yes, sir.

Q. And in examining that film did you make the corresponding markings upon your block sheets, sir? A. I have.

Q. For all items over $1,000? A. I have.

Q. May I ask for all items of $1,000 and larger, including $1,000 items. A. I have.

Q. Now, what is the largest check cashed on May 8, 1936, in accordance with your block sheets and your examination of the Recordak rolls of the pictures of the check—May 8, 1936—the largest check. A. $5,000.

Q. And what——

Mr. Gray: How much?
5010 The Witness: $5,000.

By Mr. Gahagan:

Q. And what check is that, sir? A. Check of the Parkwood Corporation.

Q. Government's Exhibit 35 (Amici Exhibit 181), is that, sir? A. Yes, sir.

Q. And you have seen that check through the picture on the Recordak machine? A. Yes, sir.

Q. If this check were destroyed you would still have the picture on the Recordak machine? A. Yes, sir.

Q. What is the next largest check that was cashed by you at your window on that date, sir—examining your block sheets, of course, to ascertain it.

Mr. Gray: Well, I believe, if the Court please, that we should make an objection to this because of the fact that it is totally immaterial and irrelevant; it is not redirect examination, and does not seem, as far as I can see, sir to have the slightest thing to do with this issue.

The Court: I will receive the evidence and save the exception of each defendant. 5012

The Witness: $1,000.

By Mr. Gahagan:

Q. And to whom was that check made payable? A. H. Mann.

Q. M-a-n-n? A. M-a-n-n.

Mr. Gray: I cannot hear that.

Mr. Gahagan: H. Mann—M-a-n-n.

By Mr. Gahagan:

Q. $1,000; is that right? A. That is right.

Q. Is there any one, single, $1,000 item or larger, outside of that one check of $1,000. Would you examine your sheet? A. There is only one other larger, which is the $5,000 one. 5013

Q. And now, is there a column in which those checks appear? A. There is.

Q. What column is that? Would you point that out to the jury upon the sheet, please? A. The "Home" column on the reverse side of the sheet.

Q. And the Home column—how about the front side of the sheet? A. There is a Home column on the front side of the sheet; that refers to the receiving side of the work.

5014 *Earl E. Seiwell—For Amici Curiae—Redirect*

Q. And the Home column on the back side of the sheet refers to the cashed items? A. Yes, sir.

Q. What is the next largest item in that column? A. In the Home column, Mr. Gahagan?

Q. Yes, sir, the column—— A. $909.98.

Mr. Gray: I am sorry.

The Witness: $909.98.

Mr. Gahagan: $909.98—do you mind if I repeat that?

Mr. Gray: May I have the question repeated?

5015 The Court: The reporter will read it.

(Question and answer read as follows:

"Q. What is the next largest item in that column? A. In the Home column, Mr. Gahagan?

Q. Yes, sir, the column—— A. $909.98.")

By Mr. Gahagan:

Q. Is that a check cashed, sir? A. That is a general ledger debit.

By Mr. Gray:

5016 Q. That is a what? A. General ledger debit.

By Mr. Gahagan:

Q. To simplify that, that may be an item which is certified; is that right, sir? A. That is true.

Q. And what is the next largest check cashed? A. $300.

Q. With the exception of the $900 and the $1,000 item and the $5,000 item, the next largest item that was cashed by you was $300; is that right, sir? A. That is right.

Q. That is on May 8th, 1936? A. May 8th, 1936.

Q. Now, in examining your block sheets to determine whether or not there was any check as large as $1,000

cashed on that day, did you examine any other column in addition to just the Home column, sir? A. Yes, sir.

Q. What column did you examine? A. The Foreign column.

Q. I direct your attention to the Clearing column. A. And the Clearing column, that is right.

Q. Now, you examined those three columns—cash—at least the Home, Foreign and Clearing, is that right, sir. A. That is right.

Q. And would checks cashed by you appear in any other column, sir? A. No, sir. 5018

Q. From these block sheets, Mr. Seiwell, are you able to state the amount—the largest amounts of cash deposited at your window, Teller Number 3, on May 8, 1936, sir?

(After a pause.)

Mr. Gahagan: The stenographer will read my question.

(Question read by the reporter.)

The Witness: Yes, sir.

Mr. Gahagan: I would like to use the word "received" rather than deposited, if I may, sir, in that question. 5019

By Mr. Gahagan:

Q. What amounts of cash were—large amounts of cash were—received in that day, sir, from any source whatsoever—Federal Reserve Bank or anything else? A. $4,000.

Q. Beg your pardon? A. $4,000 and $10,000.

Q. All right. Now, take the $10,000 what was that item, sir? A. That was ten $1000 bills received from the Federal Reserve Bank.

Q. The ones that you have testified to before, sir? A. That is right.

Q. Now, take the $4,000 item; what is that, sir? A. That is $4,000 new $1 bills.

Q. Do you have any regular practice with respect to receipt of those, sir? A. Yes, we have a regular shipment of 4,000 new $1 bills each week.

Q. I show you a piece of paper, and ask you what that is, sir. A. That is an advice enclosed with the shipment of $4,000 received on May 8th from the Federal Reserve Bank.

Q. Does that particular advice reflect whether or not it is in $1 bills? A. It says "ones, four thousand."

5021 Q. And does that bear the same date as the advice with respect to the ten $1,000 bills, sir? I will give you that for comparison. I will furnish you with it in just a moment. (After a pause.) I show you the Government's Exhibit 22 (Amici Exhibit 168) and ask you if that bears the same date, sir (handing paper to witness). A. Yes, sir.

Q. Both shipped on what date from the Federal Reserve Bank of Philadelphia.

The Court: Both dated what date, you mean?

The Witness: May 7, 1936.

Q. Now, Mr. Seiwell, would you kindly examine your block sheets, Government's Exhibit 42 (Amici Exhibit 188)
5022 in evidence; and state what the next largest amount of cash is that was received by you on May 8, 1936, after the $10,000 and the $4,000 items you have just testified to? A. $500.

Q. Would you examine those sheets carefully, please, and be sure there is no other item on them? A. You said received in cash?

Q. Received in cash; I just want to make sure. A. $500.

Q. And in what column does that appear, sir? A. The cash column.

Q. The cash column? A. The cash column.

Q. Now, would your block sheets reflect any transfers of cash within your bank from you to another teller, or from

another teller to you on May 8, 1936? Would that be reflected on your block sheets? A. Yes, sir, it would.

Q. Would you examine your block sheets for May 8th, 1936, Government's Exhibit 42 (Amici Exhibit 188) and tell me whether or not there were any transfers either by you or to you on that day? A. There are no transfers reflected on these blocks.

Q. On any one of the three blocks? A. On any one of the three blocks.

Mr. Gahagan: May I have just a second to look at 5024
my notes? Pardon me, sir.

The Court: Certainly.

Mr. Gahagan: I am about to show Mr. Seiwell the day before and the day after, and I would like to have permission to show them to defense counsel, sir.

The Court: Are those marked as exhibits?

Mr. Gahagan: No, they are not yet, sir.

Mr. Gray: Mr. Gahagan has stated he would like to show Mr. Seiwell the block sheets of the day before and the day after. The only objection I am making, sir, is it has nothing to do with the case, and it isn't redirect examination.

The Court: In the exercise of the Court's discre- 5025
tion, permission is granted to show the papers to the witness.

Mr. Gray: Will Your Honor grant an exception?

The Court: Certainly.

By Mr. Gahagan:

Q. I show you two papers and ask you what the first paper is. A. These are my block sheets of May 7th, 1936.

Q. Containing three blocks? A. Containing three blocks.

Q. That is in the language of your bank, three blocks? A. That is right.

5026 *Earl E. Seiwell—For Amici Curiae—Redirect*

Q. Made up at three different times of the day? A. That is right.

Q. Comprising the whole day's work for May 7th? A. Yes, sir.

Mr. Gahagan: May I have this marked, Your Honor?

The Court: You may, subject to the exception of each defendant.

(Block sheets dated May 7th, 1936, of the Guarantee Trust Company, were marked Government's
5027 Exhibit 43.) (Amici Exhibit 189).

Mr. Gray: He said, "May I have it marked?" His request is to have it marked, and he hasn't offered it in evidence.

Mr. Gahagan: Then I will offer it, Your Honor.

The Court: I would regard the marking as an offer.

Mr. Gray: If Your Honor does, then we desire to make an objection to the admission of it in evidence.

The Court: I had assumed that your prior objection covered this, and I said that I would admit the paper subject to the exception of each defendant.
5028 Now, your having objected to it, I will say, "exception," again.

Mr. Gray: I thought it was necessary because of the fact Your Honor said in your discretion you would allow the papers to be shown to the witness.

The Court: You have an exception there. Now I think you have two.

Mr. Gray: That is Exhibit 43? (Amici Exhibit 189).

Mr. Gahagan: Yes, Mr. Gray, the block sheets for May 7, 1936, three papers.

By Mr. Gahagan:

Q. I show you another group of papers, sir and ask you what they are. A. My block sheets for May 9, 1936.

Mr. Gahagan: And I offer the block sheets for May 9, 1936.

Mr. Gray: I make the same objection as I did to the Exhibit 43, if Your Honor pleases.

The Court: The objection of each defendant is overruled, and the exception of each defendant is noted. 5030

(Block sheets dated May 9, 1936, of the Guarantee Trust Company, were marked Government's Exhibit 44.) (Amici Exhibit 190).

By Mr. Gahagan:

Q. I notice that there are only two sheets on this block sheet. Was May 9, 1936, a Saturday, if you know?

Mr. Gray: I can say to you that it was.

Mr. Gahagan: May it appear in the record that May 9, 1936, was a Saturday, sir?

The Court: Yes, sir. I suppose all this is to explain two block sheets instead of three? 5031

Mr. Gahagan: Yes, sir, I thought it necessary.

By Mr. Gahagan:

Q. Did you work a full day on Saturdays? A. Until twelve o'clock.

Q. Mr. Seiwell, the block sheet you have before you, Government's Exhibit 43—(Amici Exhibit 189) that is a block sheet for May 7, 1936, sir? A. Yes, sir.

Q. Does that block sheet, as well as the other block sheets which are in evidence, show the amounts of cash received by you on that day? A. Yes, sir.

Q. Would you examine those block sheets and tell the Court and jury the largest amount of cash that was deposited at your window on May 7th, 1936? A. The largest amount is $1,500.

Q. Are you able to ascertain how that amount was deposited, sir? Do you know where it came from? A. I do not.

Q. And only the deposit ticket would show that, is that right, sir? A. Yes, sir.

Q. Can you examine that block sheet and determine whether or not there were any transfers of cash from one
5033 teller to another, meaning to you within the bank, or transfers from you out? Specifically, I would like to have you direct your attention, first to the question of whether or not any teller in the bank transferred any cash to you. A. There was no cash transferred to me on that date.

Q. What was the largest check cashed by you on that date, sir? A. $1500.

Q. And the next largest? A. $600.

Q. And were you able to ascertain from examining the Recordak rolls of the check—which are in the courtroom at the present time—what the check for $1500 is, sir? A. The $1500 was in reference to the cash, Mr. Gahagan.

5034 Q. Yes, sir. I asked you what the largest check was you cashed, and I believe you, likewise—— A. I misunderstood you. I was in the cash column. I misunderstood your question. There is no check of $1500 in the cash column.

Q. I am sorry, sir. A. Checks cashed.

Q. What is the largest check cashed by you on that date? A. The largest check cashed on that date was $2500.

Q. By whom, sir?

Mr. Gray: May we understand, is that a correction of his former answer?

The Witness: Yes, Mr. Gray. It is a home check, and I have no way of telling, Mr. Gahagan.

5035

By Mr. Gahagan:

Q. How many $2500 checks are on there, sir? A. Only one.

Q. I show you Government's Exhibit 34 (Amici Exhibit 180) in evidence, and ask you whether that check was cashed at your window, sir, on May 7, 1936? A. Yes, sir.

Q. By whom. A. By me.

Q. Whose check is it? A. Parkwood Corporation.

Q. How much is it? A. $2500.

Q. And what is the next check smaller than $2500 check on that day, sir, cashed by you? A. $2,000.

5036

Q. Do you know who cashed that check, sir? A. No, I do not.

Q. Now, take the block sheet, Government's Exhibit 44, (Amici Exhibit 190) for May 9, 1936, sir. What was the largest check drawn or cashed by you on that day sir? A. $3,055.40.

By Mr. Gray:

Q. Is that cashed? A. Cashed.

By Mr. Gahagan:

5037

Q. By whom, sir? A. The Hotel Brighton, Atlantic City.

Q. Did anything else appear on the check when you looked at the Recordak? A. Yes.

Q. What, sir? A. It was a payroll item.

Q. Did that appear on the check? A. It appeared on the check.

Q. And do you regularly cash checks for payroll for the Hotel Brighton, at your window, sir? A. I did at that time, yes, sir.

Q. Is there any other check over $1,000? A. Yes.

Q. What, sir? A. $2500.

Q. Whose check, sir? A. Parkwood Corporation.

Q. Is that the only $2500 item on that day, sir, cashed by you? A. Yes, sir.

Q. I show you Government Exhibit 36, (Amici Exhibit 136) and ask you if that was a check cashed by you on May 9, 1936? A. Yes, sir.

Q. Mr. Seiwell, who cashed that check, sir? A. Belle Fox, Miss Belle Fox.

Q. What cash did you pay to Belle Fox on that check?

Mr. Gray: Just a moment. That is not objected to, if your Honor pleases, if this witness has a recollection on the subject, but I think the question should be asked in view of my cross-examination of him, whether he really knows.

The Court: He will understand that his personal recollection is called for.

Mr. Gray: Thank you, sir.

The Witness: Recollection that I gave her two $1,000 bills.

By Mr. Gahagan:

Q. And for the other $500? A. The other $500, either hundreds or fifties.

Q. But as to the $1,000 bills, you do have a recollection? A. I do have a recollection, yes, sir.

Q. Would you look at your block sheet and tell us the largest amount of cash received on May 9, 1936, sir? A. $370.

Q. I included in my question, sir, any cash that you may have received from the Federal Reserve Bank. Would you examine to see whether or not you received any cash from the Federal Reserve Bank on that day? A. On May 9th, there was no cash received from the Federal Reserve Bank.

Q. And your largest item was something under $400, is that right? A. $389.

Q. Now, would you examine those block sheets for May 9th, 1936, and ascertain whether or not there were any transfers of cash to you from any other teller in the bank? There was no transfer of cash on that date from you to anyone else? A. There was not.

Q. Did anyone other than Belle Fox ever request $1,000 bills from you, Mr. Seiwell? A. Not to my recollection, no, sir.

Q. Do you recall ever handing $1,000 bills in this period to anyone except Belle Fox, sir? A. No, sir.

5042

Mrs Gahagan: May I confer just one moment, sir?

The Court: Certainly.

Mr. Gahagan: I have no further questions.

Recross Examination by Mr. Gray.

Q. Is your recollection any better about the payment of these checks to Belle Fox than it was on Wednesday? A. No, sir.

Mr. Gahagan: I believe that is argumentative, and I object to the form of the question.

The Court: No, under the circumstances, he may ask that question.

5043

By Mr. Gray:

Q. Is it? A. No, sir.

Q. Has anybody refreshed it since Wednesday? A. No, sir.

Q. On Wednesday, is it not a fact, that you did not know whether you paid $1,000 bills out on this check on May 9th, as well as subsequent checks; that you had no recollection of the actual paying of the money? A. I believe, Mr. Gray, that I testified that I gave Belle Fox $1,000 bills, on Wednesday.

5044 *Earl E. Sewell—For Amici Curiae—Recross*

Q. Did you not also testify when I asked you whether you had any personal recollection of it, that you did not have?

Mr. Gahagan: What is the page number of this, sir?

The Court: What?

Mr. Gahagan: Could I have the page on that?

A. I couldn't say, sir.

5045 *By Mr. Gray:*

Q. You can't say? A. No, sir.

Q. Don't you recollect my examining you with respect to these various checks after you had been shown each individual check by Mr. Gahagan, and had testified in response to his questions that you paid her $1,000 bills as to each of them? Don't you recollect telling me, finally, that you didn't have any personal recollection on that subject. A. That I don't remember, Mr. Gray.

Q. Well, now, let me ask you the question, and I make the question with respect to not only the check on May 9th for $2500, but to each check that was exhibited to you the other day after that date, and ask you have you any personal recollection—I don't mean something you have reasoned out in your mind, but have you any memory on the subject? Have you any personal recollection that you handed her two $1,000 bills on that $2500 check on May 9th?

5046

Mr. Gahagan: That question is duplicitous. There are two questions in that.

The Court: I am not a sufficient psychologist to know whether referring to memory and personal recollection all in one question is duplicitous or not. Is that what you refer to?

Mr. Gahagan: No, I refer to the fact he asked two questions——.

Mr. Gray: I will withdraw the question.

The Court: All right, begin over.

By Mr. Gray:

Q. Have you any memory on the subject of having paid her two $1,000 bills on Saturday, May 9th? A. I remember giving Belle Fox $1,000 bills.

Q. At some time or another? A. Yes, sir.

Q. But you don't know that you gave them to her on 5048
May 9th, do you? A. If she cashed the check on May 9th and we had $1,000 bills for her, she got them, yes, sir.

Q. Then it is simply your reasoning on that basis that makes you say that you gave her $1,000 bills, and not because you have any recollections on the subject; that is true, isn't it? A. That is true.

Mr. Gray: All right. Let me see those block sheets.

Mr. Gahagan: Right here, Mr. Gray (indicating).

By Mr. Gray:

Q. By the way, if somebody came in and wanted to 5049
change a large bill, you would change it for them? A. Yes, sir.

Q. If somebody came in and wanted to give you a lot of small bills and wanted a large bill for it, you would give it to them? A. If we had it, sir.

Q. And that wouldn't appear in your block sheet, either, would it? A. No, sir.

Q. Where is your branch in Atlantic City? Where is it located? A. New York and Atlantic Avenues.

Q. In what you might call the heart of Atlantic City, is that right? A. Yes, sir.

The Court: I didn't know Atlantic City had a heart.

Mr. Gray: I was speaking, really, sir, of the physical heart and not so much of the one that might guide the morale of the community, sir.

By Mr. Gray:

Q. In your block sheets what does the column "Clearings" mean? A. Clearings mean other banks in Atlantic City, other than our own bank.

5051 Q. Well, does it mean moneys received from them, or moneys paid to them? A. Oh, that depends upon which side of the block you are looking at, Mr. Gray.

Q. Well, I am looking at the front of the block which is headed "Paying and Receiving Teller". "Clearings" is the first column. A. Yes.

Q. What does that mean? A. May I see it, sir?

Q. Why, certainly. I thought you were familiar with it.

Mr. Gahagan: I object to any comments by Mr. Gray.

The Court: Oh, I think you are a little over-sensitive.

5052 Mr. Gahagan: Well, I feel Mr. Gray should know the rules of procedure, sir.

Mr. Gray: Well, I think I do, Mr. Gahagan, having started——

The Court: Now, gentlemen.

Mr. Gray: I am sorry, sir. May I say to Your Honor that I was practicing law before he was born, and I should know them by this time.

Mr. Gahagan: That is exactly the point I was asking, Your Honor.

The Witness: This column "Clearings" refers to items received in deposit.

By Mr. Gray:

Q. From other banks? A. From other banks.

Q. From other banks. A. To other banks, to other banks, received in deposit, payable to other banks.

Q. That is, received in deposit from your regular depositors, checks drawn on other institutions? A. On banks other than our own bank in Atlantic City.

Q. Which you had to send to the clearing house to be taken care of, or to your correspondent? A. Yes, sir.

Q. What does the column "Foreign" mean? A. Banks outside of Atlantic City. 5054

Q. In other words, the first, clearings, may mean banks in Atlantic City, and foreign means banks outside of Atlantic City? A. Yes, sir.

Q. What does the column "Cash" mean? Actual cash received? A. Actual cash on the deposit slip.

Q. Not checks? A. No, sir.

Q. And what does the item "Home" mean? A. Checks drawn on our own bank.

Q. On your own bank. I think that is all perfectly clear. And on this sheet that is marked Government's Exhibit 42 I notice a lot of pencil erasures. What do they mean? 5055

(Exhibit G-42 was shown to the witness.)

A. Where?

By Mr. Gray:

Q. Well, can't you see them? A. Up here, you mean (indicating)?

Q. Can't you see a lot of pencil erasures on that sheet? A. There is no erasures. There are items crossed out.

Q. Well, I speak of them as erasures. In other words, there are a lot of items on there that are crossed out. A. That is right.

Q. What does that mean? A. To my knowledge, they must have been items run in the wrong column.

Q. They were mistakes? A. Yes, sir.

Q. Oh, well are you sure there are no more mistakes in that than those that have been crossed out? A. There is another one that I see.

Q. Well, where is the other one? A. In the same column, a check of thirty dollars was crossed out.

Q. Well, I mean, are there any other mistakes except those that are crossed out? A. Yes.

5057 Q. In other words, how about some of these that are not crossed out, may they be mistakes, also? A. No, sir.

Q. What about this mistake down here, where there is a ditto, covering a figure, as if it was intended to eliminate that figure? A. It does eliminate it, and is also taken off at the bottom.

Q. Yes, well, what was it originally, do you know? A. Originally run for $565.74.

Q. What was it when you got through crossing it out? A. I didn't cross it out.

Q. Well, who did? A. They run—the person that run the block.

Q. Oh, you didn't keep this block? A. No, sir.

5058 Q. Oh, I thought you did. Well, it was changed from $565.74 to $65.74, was it? A. Yes, sir.

Q. And as far as you know, there may be a lot of other things here that are incorrect, also? A. There couldn't be, sir, the block wouldn't have settled.

Q. Well, now, if these things had not been crossed out you would say the same thing, wouldn't you, that there weren't any mistakes there? A. Yes, sir.

Q. And yet there would be mistakes because somebody else discovered them. A. That is right.

Q. That is right, isn't it? Yes, I see, all right. By the way, how many tellers do you have there? A. Four.

Q. And then I suppose you had some tellers there—or did you close your windows when one of you went out for lunch or went somewhere else? A. Yes, sir.

Q. In other words, this is only one part of the business of the bank, isn't it? A. That is only the business at my window, yes, sir.

Q. At your window, and what business was done at the other windows you don't know? A. I do not know, sir.

Q. I notice on the third block, third block sheet, of May 8th, 1936, Exhibit 42, there appears an item of fifteen thousand dollars under your clearings. That means that that 5060
fifteen thousand dollars was a check on some other bank in Atlantic City, doesn't it? A. Yes, sir.

Q. What is this writing alongside of it? A. That is my writing.

Q. Well, there is a ditto mark alongside of it, isn't there? A. Yes, sir.

Q. And it refers to something written above? A. Yes, sir.

Q. What is that written above? A. South Jersey.

Q. South Jersey, and that is the same thing with respect to that eighty thousand dollars, is it? A. Yes, sir.

Q. Do you know whose checks they were, either one of them? A. I don't know whose checks they were, but I know 5061
who deposited them.

Q. Well, was it anybody having anything to do with the Fox family? If it wasn't, I don't care anything about them. A. No, sir, it was not.

Q. Was not, all right. Now, your memorandum here on this twenty-five hundred dollar cash; or foreign, rather, is also South Jersey, isn't it? A. Yes, sir.

Q. Who put these ticks on these various items here? A. The person is rechecking the block when it was run.

Q. Over here, under the home item, sixty-seven hundred dollars, you have got a sort of a spearhead, a line and then a spearhead. Who put that there? A. I did.

Q. When? A. When I examined the block sheets at Mr. Gahagan's request.

Q. Oh, and what did you write alongside of it? A. Consolidated Biological Products, Incorporated.

Q. And did you then change this figure over here from a naught to an eight? A. No, sir.

Q. I see. Did you put the red check here (indicating)? A. No, sir.

Q. When did you write that on there, what point of time? I am not referring to the calendar. A. I believe it was before the first trial.

5063 Q. Didn't write it on the Sunday afternoon that you had your conference at the Claridge, did you? A. No, I wasn't there on a Sunday afternoon, Mr. Gray.

Q. Sunday morning? A. Yes, sir.

Q. I am sorry, I will have to be a little bit more exact. Spent two hours there, I think you said? A. Yes, sir.

Q. I see. A. Very enjoyable hours.

Q. Now? In other words,——

The Court: Now, you see, Mr. Gray, now you are going to get yourself into trouble.

Mr. Gray: Yes, I was just going to ask him one more question.

5064

By Mr. Gray:

Q. In other words, a great deal of pleasure was afforded you by the District Attorney and his associate? A. Well, yes.

Q. All right, we will let it go at that.

Fifth month, seventh, marked, it should be—yes, it is marked Exhibit 43: all of these forms are the same as far as the printed form is concerned, aren't they? A. Yes, sir.

Q. Now, that has an erasure on it, hasn't it? A. You mean a figure crossed out, yes, sir.

Q. Yes. I mean something crossed out, and then it is carried over in pencil to another column, isn't it? A. Yes, sir.

Q. So that was a mistake, was it? A. Yes, sir.

Q. Don't know any other mistakes in here? A. Yes, sir, this seventeen was carried forward into that (indicating).

Q. There was seventeen dollars in the wrong place. Now, do you know any other mistakes, I mean, that are not crossed out? A. No, sir.

Q. You don't know whether they are there on not? A. No, sir. 5066

Q. And in Exhibit number 44, which was for Saturday, May 9, 1936, do you find anything crossed out in that? A. Yes, sir.

Q. Where? A. Down here (indicating).

Q. What is that? A. Figure written over top of another one.

Q. And what figure was under it and what is written over it? A. A 2 underneath and a 4 written on top of it.

Q. Changing it from 212.17 to $412.17? A. Yes, sir.

Q. And that two hundred was added in pencil at the bottom, wasn't it? A. Yes, sir.

Q. And you find even in the recapitulation there was a mistake, isn't there? A. Yes, sir, that is the same two hundred dollars. 5067

Q. Same two hundred dollars. By the way, so that we may understand about these Recordaks, these pictures of these checks that are on this film are about how long? A. What do you mean, about how long?

Q. The length and the width of them as they appear on the film.

The Court: You mean of each check, Mr. Gray?

Mr. Gray: Yes, sir, I don't mean how long is the film.

5068 *Earl E. Seiwell—For Amici Curiae—Redirect*

A. The picture is possibly about a half an inch long and possibly a quarter of an inch wide.

By Mr. Gray:

Q. Absolutely indecipherable unless it is enlarged? A. Unless it is projected on a regular Recordak projector.

Mr. Gray: Yes, that is all, thank you.

Redirect Examination by Mr. Gahagan:

5069 Q. Just two questions, sir. When you looked at the checks which appeared on the Recordak did you have the assistance of any machine that you projected them through, sir? A. Oh, yes.

Mr. Gray: He said that before, didn't he?

Mr. Gahagan: I want to be sure that there be no mistake about it.

By Mr. Gahagan:

Q. One other thing I would like to ask you, sir, so there
5070 may be no misunderstanding. Did the pleasure that you derived on Sunday include anything but being in the company of Mr. Sullivan and myself, sir? A. No, sir.

Mr. Gahagan: Thank you.

Mr. Gray: They spent considerable——

The Court: Isn't that enough, anyhow? My young friend, don't let them lead you into that kind of a thing.

Mr. Gahagan: I am sorry.

The Court: You don't get anywhere by asking that kind of a question.

Earl E. Sciwell—For Amici Curiae—Recross 5071
Arthur C. Pritchard—For Amici Curiae—Direct

Recross Examination by Mr. Gray:

Q. The only thing I am really interested in about that Sunday is, you were there two hours, and one hour was spent going over your testimony? A. Yes, sir.

Mr. Gray: That is all.

Mr. Gahagan: No further questions of this witness, Your Honor. Thank you, Mr. Sciwell.

The Court: You better get off the stand while you can.

Now we are going to have a recess of fifteen 5072
minutes, ladies and gentlemen.

(Recess at 3:10 o'clock P. M.)"

A transcript of the stipulated testimony of Arthur C. Pritchard follows:

"ARTHUR C. PRITCHARD, having been duly sworn, was examined and testified as follows:

Direct Examination:

The Court: Is this an exhibit that you handed me? 5073

Mr. Gahagan: Yes, sir.

The Court: What is the number of it?

Mr. Gahagan: 18 (Amici Exhibit 164), sir.

The Court: Well, this is the exhibit purporting to contain the numbers of each of the six one thousand dollar bills?

Mr. Gahagan: Yes, sir. I hadn't shown it to Your Honor before.

The Court: Yes, thank you.

Mr. Gallagher: By the way, Mr. Gahagan, what was the last exhibit number that was offered?

5074 *Arthur C. Pritchard—For Amici Curiae—Direct*

Mr. Gahagan: 18 (Amici Exhibit 164), sir.

Mr. Gallagher: And the gentleman's first name on the stand?

Mr. Gahagan: Arthur C. Pritchard.

By Mr. Gahagan:

Q. Mr. Pritchard, if you can't hear me, sir—— A. Yes, sir.

Q. —would you please so indicate? A. Yes, sir; I can hear you all right.

5075 Q. By whom are you employed, sir? A. Federal Reserve Bank of Philadelphia.

Q. How long have you been employed by the Federal Reserve Bank of Philadelphia. A. Twenty-one years.

Q. What is your position there at the present time sir? A. Head of the currency department.

Q. How long have you held the position of the head of the currency department? A. Nineteen years.

Q. What is the function of your department, the currency department, in the Federal Reserve Bank of Philadelphia? A. Receiving deposits of cash from country banks and city banks in the Philadelphia Reserve District,——

5076 Q. Not quite so fast. A. —and counting it and sorting it and placing it in the vault subject to future withdrawals by the banks in our District.

Q. And in addition to receiving cash is there any other function of your currency department? A. Yes, I stated that, too, we place the cash in the vault subject to future withdrawals or shipments, by country banks and city banks.

Q. So in addition to receiving it, you ship it out? A. Yes, sir.

Q. What are your general duties, sir, as head of that department? A. Supervision of the operations of that department.

Q. Does your bank furnish money on demand to member banks—— A. Yes, sir.

Q. —and non-member banks? A. Yes, sir, in some cases.

Q. Would you outline to the jury and the Court what is the general practice and custom of the Federal Reserve Bank of Philadelphia in furnishing money upon request to member and non-member banks? A. City——

Mr. Gray: Objected to as totally immaterial and irrelevant, if Your Honor please.

The Court: I will receive it subject to the exception of each defendant. 5078

Mr. Gray: And then, if Your Honor please, considering the opening, which we have, of course, a record of, and which Your Honor recalls, of the District Attorney, and presuming that following that opening he is going to establish some evidence with respect to these one thousand dollar bills or some similar one thousand dollar bills, I am objecting to it as being entirely out of order, because there has been no evidence offered to establish a prima facie case in conspiracy.

The Court: The objection is overruled, and the exception of each defendant is saved.

Mr. Gray: Thank you. 5079

The Court: Go right along, Mr. Gahagan.

By Mr. Gahagan:

Q. Do you recall my last question? A. Will you repeat the question, please?

Mr. Gahagan: Please, Mr. Stenographer.

(The question was repeated by the reporter as follows:

"Q. Would you outline to the jury and the Court what is the general practice and custom of the Fed-

eral Reserve Bank of Philadelphia in furnishing money upon request to member and non-member banks?")

A. City Banks by presenting a check to our paying window receive the cash directly over our paying window.

Country banks send a letter of request to us, requesting us to charge their account and ship them a certain amount of money. These letters, of course, must be signed officially, and request a certain amount of money, and this money, of course, is shipped to them subject to their request. This 81 amount, of course, is charged to their account, and it is handled through the Post Office Department, where a receipt is given to the bank. Then in turn, of course, the money is delivered

Q. Little bit slower. I can hardly follow you. A. As the money is delivered to the bank, shipped to the bank, either by parcel post or by express, receipt is received back from the bank to us, signed by an officer, or one authorized to sign for the bank, showing that they have received the money.

Q. Was this your practice in 1936, sir? A. Yes, sir.

Q. Does your bank keep any records in the regular course of the business of the Federal Reserve Bank reflecting re- 82 quests for shipments and reflecting shipments to member and non-member banks? A. Yes, sir, we receive letters, usually in the mails. Our sorting division sorts mail, of course, according to the departments concerned. This mail is delivered to the separate departments, as in our case, the accumulated mail for currency is delivered on my desk. I usually examine it to see that everything is in order, and should be shipped, examining the signature on the letter and everything concerned to see if it is in proper order.

Then these letters, of course, are listed in our order book and delivered to the shipping department in batches, the Billing department, of course, making up the necessary memorandas to accompany the money.

The shipping department then drew the cash from the vault or the paying teller, and put up the money in shipments as requested by the letters that they hold in this patch of letters, orders.

Q. Do you keep a record of the serial numbers of any cash shipments? A. Yes, sir, we have been keeping serial numbers for about nineteen years, but recently we have been keeping—at least, we always have kept the numbers of five hundred dollar bills, thousand dollar bills, five thousand or thousand dollar bills, whether they are incoming or outgoing shipments.

5084

Q. I show you a letter and ask if you can identify that letter.

(Letter dated May 6th, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J., to Federal Reserve Bank of Philadelphia, was shown to the witness.)

A. Yes, sir, this letter was received from the Guarantee Trust Company of Atlantic City, Marine Branch, on May 6th, 1936, addressed to the Federal Reserve Bank of Philadelphia. They say:

"Will you kindly ship to this branch——

5085

By Mr. Gahagan:

Q. Now, please, I will have to ask you whether or not that letter was taken from the files of the Federal Reserve Bank in Philadelphia, sir, first. A. Yes, sir, that was taken from the files.

Q. Is that letter that you have in your hand part of the regular records—— A. Yes, sir.

Q. —of the Federal Reserve Bank of Philadelphia, kept in the regular course of the business of that bank, sir? A. Yes, sir.

Mr. Gray: That is objected to, because it could not possibly be part of the records that they kept in the regular course, because it is a letter from somebody else, outside.

The Court: The objection is overruled.

Mr. Gray: Exception.

The Court: Exception for each defendant.

Mr. Gahagan:

Q. The question, sir, that I was asking you was whether
5087 that letter is a letter which is part of your records? A. Yes, sir.

Q. And is that letter a record kept in the regular course of the business of the Federal Reserve Bank, sir? A. Yes, sir.

Q. And you rely upon that record? A. Yes, sir.

Mr. Gahagan: I offer this letter in evidence, sir; Government's Exhibit 19 (Amici Exhibit 165.)

Mr. Gray: May we see it, please?

Mr. Gahagan: Certainly. Pardon me, Mr. Gray.

Mr. Gray: We will not object to it, although we do not think it is properly proven.

5088 Mr. Gahagan: I object to the comment——

Mr. Gray: I am addressing——

Mr. Gahagan: —of the defense counsel, sir, and ask that it be—pardon me;

The Court: We won't strike anything out, but I am going to ask as politely as I can in the first instance of counsel to confine their remarks to objections to testimony and to the grounds of the objection, without comments back and forth to each other.

Mr. Gray: That was not intended for Mr. Gahagan. I was addressing Your Honor.

The Court: All right.

Colloquy: 5089

Mr. Gray: Now, I am going to interpose an objection to it. This is a letter from somebody else, and has not been properly proven, sir.

The Court: It is received subject to the objection of each defendant.

Mr. Gahagan: May I show these other papers to Mr. Gray, sir?

The Court: Yes, sir. May I ask, off the record,—

(Discussion off the record.) 5090

The Court: Well, I think it unfair, Mr. Gray, and gentlemen, to make you take all of your recess for the purpose of examining letters but I think we will take our recess now, and if you see fit by reason of it being extended to fifteen minutes, to look over the papers during part of the time, you may do so.

Mr. Gray: We have looked over them, sir, and are ready to hand them back to Mr. Gahagan.

The Court: Oh, all right.

Mr. Gahagan: Do you wish to take a recess?

The Court: No, not yet, under those circumstaces.

Mr. Gahagan: I have offered the exhibit, sir. It 5091
has been received, Government's Exhibit 19, the letter, Mr. Gray and Mr. Salsburg.

Mr. Gray: Is that the letter?

Mr. Gahagan: Yes, sir.

(Letter dated May 6th, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J., to Federal Reserve Bank of Philadelphia, Philadelphia, Pa., was marked Government's Exhibit 19.) (Amici Exhibit 165.)

5092 *Arthur C. Pritchard—For Amici Curiae—Direct*

By Mr. Gahagan:

Q. I ask you what that letter indicates in accordance with the regular practice of your bank in putting stamps upon the letter, reflecting shipment, sir. A. That means that we received this letter in our regular course of mail, and it has been——

Q. What stamp shows that? Will you point out the stamps on the letter, sir? A. Yes, sir, it means that it has been——

Q. There is a stamp on the back, sir, am I right about
5093 that? A. Yes, sir, it has first been received by our sorting division of the mail department, at six-thirty A. M. in the morning of May——

Q. And that is the stamp on the back of the letter, is that right, sir? A. Yes, sir—May 7th, 1936.

Q. Yes, sir. A. And then it was delivered to the currency department for execution.

Q. That is your department? A. Yes, sir. Now, it shows that I have O. K.ed the letter for shipment.

Q. What shows that? A. Marking—marked the letter.

Q. You identify—is it in pencil, sir? A. Yes, sir.

Q. And what does it say? A. It says ten thousand dollars, alongside of it, it is totaling the letter.

5094 Q. It has "10 M", what is that? A. "10 M" means ten thousand.

Q. Ten bills? A. That is right.

Q. Yes, sir. A. In turn, as I say, this was handed to the party making the list of the daily orders, daily order book.

Q. That is after you have received the letter yourself? A. Yes, sir.

Q. And marked the "10 M" on it, and you then hand it to someone else? A. That is right, to list the daily amount of orders and then it is handed——

Q. I didn't get that next step. To whom is it handed? A. Well, of course, as I stated, it is given to the order clerk to make a list of the orders.

5095

Q. Yes, sir. A. And then in turn the orders are handed to the billing clerk to make the necessary billing to take with the shipment.

Then in turn the orders are handed to the shipping department, the currency shipping department, who actually put up and make the shipments. Now,——

Q. Well, now, referring to the letter and the stamps, there are certain stamps on the letter, are there not? A. Yes, sir.

Q. Well, now, would you refer to the stamps and indicate what there is about the stamps—— A. Yes.

5096

Q. —that shows who performed each transaction, sir? A. This stamp is stamped on here by the currency shipping department, showing that the money was put up by—the actual order was put up by the first man, in this case, man by the name of Regan, it was put up and tied and the enclosure placed with it.

The second man, whose name is Brehm, inspects the shipment, verifying it, and also making a list of the numbers of certain numbers in this shipment.

Q. Well, that is done before; is it not, sir, before it is tied up, aren't the numbers made before it is tied up? A. Yes, sir.

5097

Q. So then it would be the reverse way, would it not? A. Yes, sir.

Q. First the numbers would be taken, and then it would be tied up? A. Well, as a matter of fact, on the smaller shipments they are left so that the numbers are available for listing.

Q. I see. A. We don't tie them so that they can't be taken.

Then in the third place, the third man in the shipping department bags the money, he inspects the tag and the letter to make sure that the money is going to the party that ordered it, so he inspects it and places it in the bag

and seals it with a lead seal with a tag on it addressed to the party that has ordered the money.

After that operation a list, of course, is made, a postal list is made, showing the number of shipments, and this list of shipments is handed to our Post Office Department, who gives a receipt for the shipment to be made by registered mail.

Then the letter then has also a memorandum on it as to the amount of postage required for the delivery of that package, which shows in this case it cost $1.67, including registration, surcharge and postage.

5099 Then after all the operations the letter is O. K.'ed by the currency department for file in our filing department, and that completes the operation of this order.

The Court: May I take the letter, please?

The Witness: Yes, sir.

The Court: Out of abundant caution I am receiving this letter of May 6th subject to later evidence as to the signature of the assistant treasurer of the Guarantee Trust Company, which I assume you will be in a position to furnish.

Mr. Gahagan: Yes, sir. May I read this letter to the jury, sir?

5100 The Court, You may.

Mr. Gahagan: The Guarantee Trust Company, Atlantic City, New Jersey, letter dated May 6th, 1936; Philadelphia, Pennsylvania:

"Gentlemen:

"Will you kindly ship to this branch Ten (10) NEW One Thousand Dollar Bills and charge to our account.

Yours Very Truly,

Marine-Atlantic Safe Branch

/s/ Jos. B. Smith

Assistant Treasurer";

with certain stamps on, which I won't refer to at the present moment.

The Court: Now, will you pause for a moment,—

Mr. Gahagan: Yes, sir.

The Court: —because I want to say something to the reporter.

(Discussion off the records.)

The Court: We will now take a recess of fifteen minutes. 5102

(Recess at 11:30 o'clock A. M.)

Direct examination by Mr. Gahagan (Continued):

Q. Mr. Pritchard, I show you four slips of paper and ask you whether you can identify them. A. Yes, sir. The first white copy is a debit memorandum we send to our bank ledgers to charge the bank's account with the amount of money shipped, in this case it is ten $1,000 bills.

The second brown copy is a copy that we enclose with the shipment for the bank's own records that they keep. That also shows that we shipped to the Guaranty Trust Company, Marine Branch, ten $1,000 bills on May 7, 1936. 5103

Q. And what is done with that brown copy? A. That is enclosed with the shipment for the bank to keep it, for the bank's own record.

Q. What bank, sir? A. I beg your pardon.

Q. What bank keeps it? A. The bank to whom the shipment is made, it is enclosed with the shipment to the bank who ordered the money, and this record is kept by them for their own memorandum.

Q. And in this case, what bank was it, sir? A. This is the Guaranty Trust Company at Atlantic City.

Q. Did these particular papers you have in your hand originate in your bank? A. Yes, sir. They were typed by us in our shipping department.

Q. Are they duplicate copies, in other words, carbon copies of each other? A. Yes, sir, all made up at one time. The third blue copy is a copy we also enclose with the shipment for receipt by them acknowledging receipt of the cash.

Q. Receipt by them, you mean the Guaranty Trust Company of Atlantic City? A. Yes, sir. This is enclosed with the shipment to the Guaranty Trust. When they receive the money they count it and then acknowledge it back to our auditing department.

By the Court:

Q. That blue paper that you have in your hand, where did it come from? From your bank or not? A. Originally we enclosed it with our shipment to the Guaranty Trust Company in Atlantic City.

Q. Is that a copy of a shipment that was sent to the Guaranty Trust Company that you preserve in your own files or not? A. Yes, sir.

Mr. Gahagan: No—pardon me, sir. May I clear that up?

The Court: Yes.

By Mr. Gahagan:

Q. This particular blue copy originated with your bank, is that right, sir? A. Yes.

Q. What is done with it after these copies are prepared? What is done? If you will listen to my question and then answer it, I will repeat it. A. Yes, sir.

Q. I think we will get along faster if you would answer the question I ask. A. Right.

Q. Which is, sir what is done with the blue copy after it is prepared? A. Enclosed with the shipment to the bank to whom the money is shipped, in this case the Guaranty Trust Company in Atlantic City.

Q. And then what is done with the blue copy? A. The blue copy upon receipt of the money, the bank signs that copy and returns it to us acknowledging receipt of the cash.

Q. And then this blue copy, His Honor's question was—does this come recently from the files of your bank, which is 5108
the Federal Reserve Bank in Philadelphia? A. Yes, sir.

Q. And the brown copy originated with you? A. Yes, sir.

Q. From whose files would the brown copy come from? A. That came from our files, also.

Q. Originally. A. Yes, sir.

Q. But recently where does it come from? It says enclose with shipment; is that returned to you? A. Normally, it would be, but recently we have been only enclosing a blue copy and mailing a separate copy by mail, and using this in our auditing department to save checking the accounts.

Now, that might come from our files, too. I know the brown copy isn't being enclosed for a matter of economy, we 5109
have discontinued using this copy, and it isn't sent for merely the reason that there was a blue copy enclosed with it, and the pink copy is mailed under separate cover to the bank apprising them that the shipment is on route, and then if it has not been discovered, of course, they would be notified because they had the memorandum it was coming in and it should be received, of course.

Q. The pink copy is sent by mail, is that right? A. Yes, sir, under separate cover.

Q. And all four papers originate with your bank? A. Yes, sir.

5110 *Arthur C. Pritchard—For Amici Curiae—Direct*

Q. Can you state whether or not these papers refer to the letter of May 6th, received by your bank on May 7th? A. Yes, sir. These copies were made from the letter. The billing is made from the order from the Guaranty Trust Company.

Mr. Gahagan: The stenographer took the letter with him, Your Honor; I don't know why. The Government offers these four slips of paper, sir.

The Court: They may be received.

(White copy of debit ticket dated May 7, 1936, 5111 was marked Government's Exhibit 20.) (Amici Exhibit 166).

By Mr. Gahagan:

Q. The white debit ticket is Government's Exhibit 20, (Amici Exhibit 166) can you state whether or not that Government Exhibit 20 (Amici Exhibit 166) is kept with your bank? A. That is the original.

Q. That is part of your files? A. Yes, sir, the original, that is part of our own files.

(Brown copy of debit ticket dated May 7, 1936, was marked Government's Exhibit 21.) (Amici 5112 Exhibit 167).

By Mr. Gahagan:

Q. The brown copy, Government's Exhibit 21, (Amici Exhibit 167) debit ticket states, enclose with shipment, on the side, is that not so, sir? A. Yes, sir.

Q. What happens to that particular brown copy? A. This copy is sent to our audit department as a matter of a memorandum so that they keep a record right at hand to know what shipments have been made to save the time of looking it up.

Q. In 1936 can you state whether or not this copy was enclosed with the shipment as it indicates on the brown copy? I draw your attention to the left-hand corner, and there is a legend there which has enclose with shipment, and I ask you whether or not that was enclosed with the shipment. A. At that time I am quite sure that they were being enclosed with the shipment.

Q. At the present time you follow a different practice? A. Yes, sir.

(Blue copy of debit ticket dated May 7, 1936, was marked Government's Exhibit 22.) (Amici 5114
Exhibit 168).

By Mr. Gahagan:

Q. The blue copy, Government's Exhibit 22, (Amici Exhibit 168) debit ticket, and I ask you what is done with the blue copy, sir? A. The blue copy is placed in our files after it has been checked by our auditing department against our shipping records, to make sure they have a receipt back for the money that has been shipped.

Q. Originally it is enclosed with the shipment? A. Yes.

Q. Does that bear any legend on it, enclose with shipment? A. Enclose with shipment, it says, over the top of 5115
it, over the bank's name.

(Pink copy of debit ticket dated May 7, 1936, was marked Government's Exhibit 23.) (Amici Exhibit 169).

By Mr. Gahagan:

Q. And the pink copy of the debit ticket, dated May 7, 1936, is Government's Exhibit 23 (Amici Exhibit 169), and this pink copy bears what legend, sir? A. It says mail to the Atlantic City Guaranty Trust Company.

5116 *Arthur C. Pritchard—For Amici Curiae—Direct*

Mr. Gahagan: May I read these to the jury just briefly?

The Court: Yes.

Mr. Gahagan: A white ticket, a debit ticket of the Federal Reserve Bank of Philadelphia, currency department. The item is at the top, Atlantic City, New Jersey, main office, Guaranty Trust Company, May 7, 1936, total $10,000, one thousands—down here—$10,000, covering the following described shipment of currency. That is Government Exhibit 20. (Amici Exhibit 166).

5117

By Mr. Gahagan:

Q. And these others are duplicates, are they not? A. Yes, sir. They were all made at one time.

Mr. Gahagan: Number two with a legend, enclose with shipment; number three with the legend, enclose with shipment. I will pass them around, sir.

You see that, enclose with shipment, on the left-hand side, and the pink copy, Government's Exhibit 23—(Amici Exhibit 169).

Mr. Gray: I am sorry, I must object to his making an address to the jury, sir.

5118 The Court: I don't consider it an address. He is calling attention to the exhibits, as he may do.

Mr. Gray: I have no objection to his calling attention to the exhibits, but he is elaborating upon this witness's testimony; and once or twice his elaborations on his questions have not been quite in accordance with the witness' evidence, and I don't think he ought to be permitted to testify.

The Court: You may proceed, and an exception for each defendant may be noted.

Mr. Gahagan: I refer to the Government's Exhibit 23 (Amici Exhibit 169) and draw the attention of the

jury to the left-hand corner, "Mail to," and the address of the bank, the name of the bank underneath that. I show them to the jury, Your Honor, sir.

The Court: I, of course, want the jury to see them, but having read one of the four duplicates and called attention to others, I don't want you to stop the examination of witnesses while that is being done.

Mr. Gahagan: All right, sir.

The Court: That takes too much time, but the jury may pass them around.

Mr. Gahagan: I didn't think it would distract them. 5120

The Court: They have been told.

Mr. Gahagan: Because they have been told about it, sir. Your Honor, it is necessary that I obtain the letter of May 6th, and I am sorry——

The Court: All right, take your seat. We will wait until they have passed it around.

By Mr. Gahagan:

Q. Referring to Government's Exhibit 19, (Amici Exhibit 165) letter dated May 6, 1936, requesting ten new $1,000 bills, does your bank have a record which is kept in the regular course of the business of the Federal Reserve Bank of 5121
Philadelphia, which records the serial numbers of the ten $1,000 bills which you stated were shipped pursuant to this request of May 6th? A. Yes, sir.

Q. I show you a batch of papers and ask you what they are, sir? A. They are a record of shipments to our out of town banks showing the numbers of the notes that have been shipped to them.

Q. And can you find on the records that I have shown you, any record of the ten $1,000 bills which were shipped pursuant to the request in Government's Exhibit 19 (Amici Exhibit 165) the letter from the Guaranty Trust Company?

5122 *Arthur C. Pritchard—For Amici Curiae—Direct*

A. Yes, sir. This record is dated May 7th, 1936, a record here of a shipment to the Guaranty Trust, Marine Branch, of ten $1,000 bills, and the numbers are enumerated.

Mr. Gahagan: Now before you enumerate the numbers, I would like to offer this in evidence, Your Honor, and as this——

Mr. Gallagher: Pardon me, Mr. Gahagan. Let me see it, just to fix the time.

By Mr. Gahagan:

5123 Q. Would you state the time covered by the records that I have shown you?

Mr. Gahagan: I don't intend to offer the whole group, sir, but counsel asked that, the time covered.

By Mr. Gahagan:

Q. In other words, when was the first listing of $1,000 bills or $500 bills made on that record, and when at the end of the record was the last listing, the two dates on either side? Did you hear my question, sir? A. Yes. I didn't understand if you meant on this one day

5124 Q. No, sir, the whole record that I have handed to you. A. Oh, I see. On May 7th it shows that we shipped ten——

By the Court:

Q. No. What is the first date appearing on that group of papers?

By Mr. Gahagan:

Q. The first date right up here, sir (indicating). A. Yes, sir. That is May 7th.

By the Court:

Q. What is the last date appearing on that group of papers? A. The last of the whole paper shows May 7th. All these shipments were listed under the date of May 7th.

By Mr. Gahagan:

Q. I don't think you understand, sir. Counsel would like to know this: This is a group of papers, is it not, covering shipments of bills, $500 and $1,000 bills from the Federal Reserve Bank in Philadelphia, is that it? A. Yes, sir.

Q. Now, what period does this cover, the whole group of 5126
papers? A. From the first down to the last?

Q. Yes. A. From May 1st to May 29th.

By the Court:

Q. What year? A. 1936.

The Court: Good.

Mr. Gahagan: The Government would like permission to substitute a photostatic copy for the paper in question, as these are the regular records of the Federal Reserve Bank, sir.

The Court: Any objection to such a substitution?

Mr. Gray: No. 5127

Mr. Gahagan: The photostatic copy is Government's Exhibit 24, showing serial numbers of bills.

(A photostatic copy of a record showing serial numbers of bills shipped to out of town banks was marked Government's Exhibit 24.) (Amici Exhibit 170.)

Mr. Gahagan: May the witness read into the record the numbers and letters of these bills that were shipped, sir, on Government's Exhibit 24 (Amici Exhibit 170)?

5128 *Arthur C. Pritchard—For Amici Curiae—Direct*

The Witness: Date of May 7, 1936, we shipped ten $1000 bills to Guarantee Trust, Marine Branch. The numbers are as follows:

C00016293A
C00001221A
C00013944A
C00003267A
C00011235A
C00012037A
C00022287A
5129 C00013203A
C00013119A
C00004423A

By Mr. Gahagan:

Q. I noticed, in following you, that there actually does not appear any letter "A" after all these particular bills that you have read, sir. Can you explain that? A. Yes, sir; all thousand-dollar bills that have been issued have an "A" following them. The notes would have to be—other than "A"—would have to be beyond 999,999 notes, but at the present time, as a matter of fact, there has been only a little over 16,000 of those notes issued.

5130 Q. In other words, "C" notes—— A. Federal Reserve Bank of Philadelphia, yes, sir.

Q. What does the prefix letter "C" mean? A. "C" means they have been issued by the Federal Reserve Bank of Philadelphia, the Third District.

Q. Now, sir, you have been in the Federal Reserve Bank for something over twenty years? A. Yes, sir.

Q. In the course of your duties in that bank, have you from time to time compared serial numbers of bills, sir? A. Yes, sir.

Q. At my request, did you compare Government's Exhibit 18 (Amici Exhibit 164) in evidence with Government's Ex-

hibit 24 (Amici Exhibit 170) in evidence to ascertain whether or not any of the five or any of the six $1000 bills contained on Government's Exhibit 18 (Amici Exhibit 164) were included in the shipment of May 7, 1936, sir?

Mr. Gray: The objection I make, if your Honor please, is that here we have two exhibits. This witness has no right to make a comparison between the two exhibits. It is the jury's duty.

The Court: Well, if you will just change your question to a little different form and ask the witness in substance, not whether certain bills were included 5132
in the shipment but whether the numbers were the same in one exhibit as in another, I will——

Mr. Gahagan: Yes, sir.

The Court: —receive that evidence in the same way that I would receive a computation—written computation—made up from exhibits in the case. I think it is entirely proper. I will save the exception of each defendant.

Mr. Gahagan: May I withdraw the question that I have previously asked, Your Honor?

By Mr. Gahagan: 5133

Q. And I ask you whether or not any of the serial numbers of the bills appearing on Government's Exhibit 18 (Amici Exhibit 164) appear likewise on Government's Exhibit 24 (Amici Exhibit 170) in evidence?

Mr. Gray: I am compelled to renew my objection because he withdrew the last question.

The Court: Yes; you have your exception just the same, and both of you have it—both defendants.

The Witness: Yes, sir; five of the notes are the same number. They are identical in that both exhibits show five of the same numbers.

5134 *Arthur C. Pritchard—For Amici Curiae—Direct*

By Mr. Gahagan:

Q. Five of the notes on which exhibit, sir? A. On the exhibit—on the exhibit of the Federal Reserve Bank—shows the five of our numbers originally shipped to Guarantee Marine in Atlantic City appear on this same record.

Q. Now, the same record—would you look at the exhibit number, sir? A. Yes, sir: G. 14-A.

The Court: Won't you look at the exhibit number and tell us what it is? Are you doing that?

5135 *By Mr. Gahagan:*

Q. Yes, sir; just please look at the exhibit number. Will you look closely at it? Can you read that? A. Oh, yes; G-18; yes, sir. (Amici Exhibit 164.)

Q. And look at your exhibit number that you were comparing. A. G-24. (Amici Exhibit 170.)

The Court: I am raising my voice because I think the witness is a little hard of hearing.

Mr. Gahagan: It is just a question of hearing, Your Honor; I mentioned that to start with.

Your Honor, shall I pass these among the jury now?

5136 The Court: Now, it is to be understood that this evidence that I have just received is received merely as an aid or a computation made from exhibits already admitted in the case.

Mr. Gahagan: Yes, Your Honor.

The Court: That I say for the purpose of the record.

(Mr. Gahagan shows exhibits to the jury.)

Mr. Gahagan: On this question of examination of the bills, sir; may I ask your indulgence so that the jurors can look at the numbers?

The Court: Yes, Mr. Gahagan.

Mr. Gahagan: Thank you, sir.

By Mr. Gahagan:

Q. I show you five letters, Mr. Pritchard, and ask you to identify those five letters, sir.

Mr. Gray: What are they? Let me see them.

Mr. Gahagan: Oh, I am terribly sorry, sir; I should have shown them to Mr. Gray.

5138

By Mr. Gahagan:

Q. I show you five letters and ask you whether you can identify them, sir. A. The five letters represent requests of shipments of currency by the Guarantee Trust of Atlantic City.

Mr. Gray: May I interrupt, sir, and object? Can he identify them? That called for a yes or no; and therefore I did not make any objection——

The Court: Yes.

By Mr. Gahagan:

Q. I am speaking louder. Can you identify—— A. Yes, I can hear you all right. I can identify them. 5139

Q. Mr. Gray wanted that question answered—can you say whether or not—if you don't hear me, please tell me;—— A. I hear you; I hear you.

Q. —whether or not those five letters are part of the regular records of the Federal Reserve Bank,—— A. Yes, sir.

Q. —of Philadelphia, kept in the regular course of business of the Federal Reserve Bank of Philadelphia? A. Yes, sir.

5140 *Colloquy*

Mr. Gray: That is objected to, if the word "kept" means "kept" as we speak of records. This is in the same category as the other letter, if Your Honor pleases. They come from someone else outside, and when he asks the proper question I shall object so as to get the benefit of Your Honor's ruling, which I presume, of course, will be to sustain.

The Court: Now, there is no objection to counsel advising me, because I have not looked at the letters, whether they all purport to come from the same source.

5141 Mr. Gahagan: They do, Your Honor, and I would like to have this line subject to the identification of the signature of the assistant treasurer, Joseph B. Smith, of the Guarantee Trust Company, which the next witness will identify, sir.

Mr. Gray: Subject to that, we will have no objection to them, if that is done; if not, we reserve the right to move to strike them out.

The Court: They will, Mr. Gray.

Mr. Gahagan: I have not offered them as yet, Mr. Gray. I was just asking to identify the records.

5142 The Court: And the letter of May 6th, which formerly I admitted, I am speaking about, which you may remember, for the purposes of the record.

Mr. Gahagan: And the letter of May 6th is in the same category.

The Court: Subject to their being shown later, the letters may be received as exhibits.

Mr. Gahagan: And I offer these letters in evidence, subject to identification and signature.

The Court: They may be received.

Mr. Gahagan: The letter of May 8, G-25—(Amici Exhibit 174).

Colloquy 5143

The Court: I think I ought to say for the purpose of the record that in taking that precaution of awaiting the proof as to the signature, that I do not thereby intimate that if put to it I would not have received the letters without proof of signature, because if it is shown that the letters were acted upon they might be received without proof of signature. But that question has not yet arisen in this case.

Mr. Gahagan: Government's Exhibit 26 (Amici Exhibit 172), letter of May 28, 1936;

Government's Exhibit 27 (Amici Exhibit 173), letter of June 11, 1936; 5144

Government's Exhibit 28 (Amici Exhibit 174), letter of August 6, 1936;

Government's Exhibit 29 (Amici Exhibit 175), letter of August 7, 1936.

(Letters were marked in evidence as follows:

Letter, May 8, G. 25 (Amici Exhibit 171);
Letter, May 28, 1936, G. 26 (Amici Exhibit 172);
letter, June 11, 1936, G. 27 (Amici Exhibit 173);
letter, August 6, 1936, G. 28 (Amici Exhibit 174);
letter, August 7, 1936, G. 29 (Amici Exhibit 175).)

Mr. Gahagan: May I just read— 5145

The Court: Yes; and without interfering with the freedom of counsel on either side with reference to the way in which he wants to present his case, I suggest that possibly it may be sufficient if you read those letters to the jury without waiting to have them passed around, but I will leave that to you.

Mr. Gahagan: All right, sir, I just wanted to read one letter and then the text of the other letters.

The Court: All right.

Mr. Gahagan: (Reads letter to jury) Each letter written from the Guarantee Trust Company, Atlantic

City, New Jersey, to the Federal Reserve Bank of Philadelphia, 928 Chestnut Street, Philadelphia, Pennsylvania. Each letter is so addressed. The letter of May 8th: "Gentlemen: Would you kindly send us ten $1000 bills and charge to our account."

The letter of May—withdraw that last, please. This letter is signed "Yours very truly, Marine-Atlantic Safe Branch, Joseph B. Smith—Jos. B. Smith—Assistant Treasurer" and stamps appearing on the face of the letter.

5147 The next letter, Government's Exhibit 26 (Amici Exhibit 172), dated May 28, 1936, similarly addressed, similarly signed—"Gentlemen: Will you kindly send us ten $1000 bills and charge to our account."

Letter of June 11, 1936, Government's Exhibit 27 (Amici Exhibit 173), "Gentlemen: Kindly send us twenty-five $1000 bills and charge to our account. We want these bills by Tuesday, June 16, 1936." Similarly addressed and similarly signed.

Government's Exhibit 28 (Amici Exhibit 174), letter dated August 6, 1936: "Gentlemen: Would you kindly send us ten $1000 bills, also the following new bills: 8,000 in ones, 5,000 in fives; and charge to our account. Yours very truly," and the same signature.

5148 Government's Exhibit 29 (Amici Exhibit 175), letter of August 7, 1936, from the same bank, similarly addressed and similarly signed: "Will you kindly send us ten $1000 bills and charge to our account."

By Mr. Gahagan:

Q. One last question of this witness, Your Honor. Would you kindly examine these letters and see whether or not each of these letters contains a pencil notation by you approving the shipment? A. Yes, sir; they do.

Q. Were each of these letters acted upon by the Federal Reserve Bank of Philadelphia? A. Yes, sir.

Q. In other words, can you tell from these letters whether or not currency was actually shipped to the Guarantee Trust Company, Marine Branch, pursuant to their request? A. Yes, sir; in each case it shows that they passed through our shipping department and were O.K'd by the three men in that department; also showing in each case—it shows that they have the postage amount on there, and also that it has been finally O.K'd for file, showing that the operation had been completed in the currency shipping department.

Q. And the O.K. for file—what does that mean, sir? A. That means that the operation has been completed and shipment has been made to the bank. 5150

Q. May I ask this question: Does that indicate that you received advice from anyone with respect to the shipment? A. No, sir; that means that the currency shipment department has made the shipment and we are completely through with the order, and it goes to file for future records.

The Court: Mr. Gallagher, a moment or two ago I noticed that you started to rise. Did you want to say something to the Court?

Mr. Gallagher: No, sir; except that I wanted to look at Exhibit 28 (Amici Exhibit 174), and I thought I would postpone that for a few minutes.

Mr. Gahagan: I would be glad to show that to 5151
Mr. Gallagher now, sir.

No further questions from the Government, sir. You may inquire.

Cross Examination by Mr. Gray:

Q. Mrs. Pritchard, you, of course, testified in this case at the last trial, didn't you? A. Yes, sir.

Q. And at what period of time was the matter of the shipment of any of these monies that you have now testified about called to your attention first? In other words, when were you questioned about it first? A. You mean when I

contacted Mr. Gahagan? Well, Mr. Gahagan, I spoke to Mr. Gahagan once in reference to these shipments.

Q. I don't care who you contacted or who contacted you, I want to know when the matter was first called to your attention. A. The day of the first trial.

Q. And you mean up until that time you had never been asked about the matter before? A. No, sir.

Q. Haven't you testified that you were inquired of about the matter back in 1940? A. I beg your pardon, will you repeat that question, Mr.——

5153 Mr. Gray: You repeat it, Mr. Stenographer, so that I won't change the language.

The Witness: Will you repeat the question?

(The question was repeated by the reporter as follows:

"Q. Haven't you testified that you were inquired of about the matter back in 1940?")

The Witness: I don't quite get that yet.

The Court: You will have to speak louder, Mr. Stenographer.

(The question was again repeated by the re-
5154 porter.)

A. No, sir.

By Mr. Gray:

Q. You have produced an exhibit, or you have produced a record which has been marked as Exhibit 24 (Amici Exhibit 170), which contains a record from a certain date to a certain date of the shipment of one thousand dollar bills to out-of-town banks. Is that correct? A. Yes, sir.

Q. Do you recall——

Mr. Gahagan: Just so the record may be straight, Your Honor, it is only one page of that record, and if Mr. Gray wants to mark the rest, I just wanted to offer that suggestion, sir.

The Court: I think——

Mr. Gray: I object to the interruption.

The Court: Now, won't you let me interrupt, Mr. Gray?

Mr. Gray: Yes, sir, at any time.

The Court: I think Mr. Gray is entirely right that such a record was produced, covering the period of that from May 1 to May 29. 5156

Mr. Gray: That would be my next question.

Mr. Gahagan: Except——

Mr. Gray: Pardon me; I ask that unless there is objection to be made to my question that Mr. Gahagan does not interrupt me, sir.

The Court: Well, now,——

Mr. Gray: I think I am perfectly right——

The Court: Well, now, let us have peace if we can. Isn't it true that there was marked as an exhibit, however, only one page?

Mr. Gray: That is correct, sir.

The Court: So we understand each other. 5157

Mr. Gray: That is correct, sir.

By Mr. Gray:

Q. Do you recall without my showing you that group of papers, again, the date upon which that memoranda started? If you don't, I will show you the papers. A. No, sir, I don't recall it.

Q. I believe that this bunch of papers which I am handing you is the bunch that you were shown. Will you look at it, please, now, and tell me what is the first date? A. The first date is May the first.

year? A. 1936.

ne look at that again, please. A. Yes, sir.

they are not in order, are they, they have to be

way? A. Yes, sir.

you records prior to May 1st, 1936? A. No, sir,

ve we have. For space economy in our storage

we only keep them a certain number of years.

many years do you keep them? A. A matter of

ears.

h? A. Well, I would say six years, six or seven

imes, it doesn't necessarily have to hold right to

riod.

ou know when your records prior to May 1st,

destroyed, the records of this type? A. No, sir,

have to show in our filing department, who would

cord of when the records were destroyed. They

exactly.

you ascertain that and then come back and testify

es, sir.

institution is right next door, isn't it? A. Yes,

you do not know how many one thousand dollar

hipped to the Marine Branch of the Guarantee

any at Atlantic City during the year 1936 but

y 1st, do you? A. No, sir. I believe you could

at, however.

you destroy such records as that do you destroy

to a May 1st date? A. When I say we destroy

vas merely a lead pencil record of the numbers,

rs requesting the orders, or requesting the cash,

les. They are kept, the original orders.

did you produce these letters today? A. Yes,

rought them with you? A. No, sir.

Q. The Government has had them, haven't they? A. That is, from May the 7th to August 8th.

Q. Yes. How long has the Government had them? A. I would say around the—during the period of the first investigation.

Q. Do you mean by that the first trial? A. Yes, sir.

Q. You are sure of that? A. Yes, I am quite sure of it, I—I wouldn't say positively, because I don't know. I know that they had some records, and others were secured afterward.

Q. But it just happens that your records prior to May 1st, 1936—and I mean the records such as the one that you have produced here, which starts on that date—have been destroyed? A. Yes, sir, I am quite sure. 516

Q. Will you tell us why they are destroyed down to May 1st, instead of down to the end of a year? A. Well, simply that I suppose the period up to that point had—they were destroyed up to that point simply from an accumulation, not from any stated date.

Q. Well, why weren't they destroyed, for instance, until June 1st? Is there a reason for it? A. No, sir, I don't believe so.

Q. And by whose orders are they destroyed? Yours? A. The bank has a policy on certain records that they feel that they should keep a certain length of time, or certain records. 516

Q. Will you try and answer my question as to by whose orders they are destroyed? Yours? A. I would—I would say so.

Q. When did you give the order, and when were the records prior to May 1st, '36 destroyed? A. I don't know, sir.

Q. Has it been a long while ago? A. Yes, sir.

Q. How long ago? A. Usually the filing department or the storage department calls your attention to the fact that certain records are accumulating, and they ask the privilege of sending you a record of them, and ask the privilege to destroy them up to a certain point.

5164 *Arthur C. Pritchard—For Amici Curiae—Cross*

Q. How long ago was the last destruction of the records of that type? A. I wouldn't know, sir.

Q. Two or three years ago? A. I wouldn't know, Mr. Gray.

Q. Not this year? A. No, sir, I wouldn't know.

Q. Well, you would know that, wouldn't you? Wouldn't you recollect whether you had given orders to destroy those records this year? A. There are so many things that you have to recollect in a department of that size, Mr. Gray, it would be almost impossible to say exactly when the orders were given for the destruction of those records.

5165 Q. Do you keep a memorandum when you give an order to destroy records of your having given that order? A. The records would be kept as I stated, in the filing department or in the storage department.

Q. In other words, you have a record somewheres, then, of the day when the last records were destroyed? A. Yes, sir.

Q. Will you secure that for us, please? A. Yes, sir.

Q. Thank you. And have you examined that record of thousand dollar bills—and other bills, I suppose, it contains —shipped outside of Philadelphia, to see whether or not the shipments were made in accordance with those letters that have been identified by you? A. Yes, sir.

5166 Q. And they were made? A. Yes, sir.

Q. Have you examined that record to see whether there were other shipments of one thousand dollar bills made during the same period to the Marine Branch of the Guarantee Trust Company at Atlantic City? A. What do you mean by the same period, Mr. Gray?

Q. Same period that you testified to, covered by these letters. A. Yes, sir.

Q. Were there any? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. You examined it yourself? A. Yes, sir.

Q. When? A. Before and after the trial—during the trial, I would say.

Q. Before and after the last trial? A. You made the request that I get the records——

The Court: Oh, no, now, answer his question and let's not get too far into the other trial.

The Witness: Yes, sir.

By Mr. Gray:

Q. You examined the matter about the time of the last trial? A. Yes, sir.

Q. And your memory is good on that from that time to this, is it? A. Yes, sir. 5168

Q. Did you examine them any time for any date after August 7, 1936? That is the date of the last letter,—— A. Yes, sir.

Q. —so that you may understand why I fix that date. A. I think August 8th was the last letter, wasn't it, Mr. Gray, or August 7th?

Q. The letters—I will answer your question. A. Yes, sir.

Q. The letters that the Government offered, as far as I can see, the very last one, received by you on August 8th, possibly, but is dated August 7th. A. Yes, sir.

Q. Did you examine as to the shipment of thousand dollar bills to the Marine Branch of the Guarantee Trust Company after that date? A. No, sir. 5169

Q. Will you examine it for me for the rest of the year, 1936, that won't put too great a burden on you, and be able to tell me about that later? A. Yes, sir.

Q. All right. And there is one request contained in one of these exhibits—I want to get the exhibit number—which is Exhibit 27 (Amici Exhibit 173), and is a letter dated June 11, asking you to send twenty-five one thousand dollar bills, and stating that we want these bills by Tuesday, June 16, 1936. Will you examine that record and tell me what date they were shipped?

Maybe you can do it from these letters here.

5170 (The witness examined the records.)

A. I beg your pardon, but they wouldn't be in this May shipment.

By Mr. Gray:

Q. Oh, that is only May? A. Yes, sir.

The Court: Just as we have been over it several times, Mr. Gray,——

Mr. Gray: I am sorry, sir.

5171 The Court: —May 1 to May 29.

Mr. Gray: Yes, sir.

By Mr. Gray:

Q. I show you Exhibit 27 (Amici Exhibit 173) and ask you whether you can tell from that letter when they were shipped. A. Yes, sir, they were shipped on June 15th.

Q. So that they would in the ordinary course reach Atlantic City on the 16th? A. Yes, sir.

The Court: Do other counsel wish to cross-examine?

Mr. Gray: I am sorry, sir, I am not quite finished.

5172 The Court: Oh, I misunderstood.

Mr. Gray: I sat down for reasons known to Your Honor.

By Mr. Gray:

Q. Mr. Pritchard, the first letter that was shown to you, which, if I recall it correctly, was dated on May 6th or 7th, but it doesn't make any difference, the first one, in which there were, in response to which there were ten one thousand dollar bills sent to Atlantic City, to the Marine Branch of the Guarantee Trust, you took that letter, and whatever

other records you had, and you made a comparison and told us what the numbers of those ten bills were, and made a comparison between them and another record of five other bills. Do you recall that? A. Yes, sir.

Q. Do you recall also that the request of the Marine Branch of the Guarantee Trust Company was for new bills? A. I believe in one instance they did ask for new.

Q. Did you send them new bills? A. No, sir, I doubt it. In some instances, when we have a surplus of second, or circulated money on hand, we don't supply new ones.

Q. Did you write them any communication indicating why you did not send them the bills as they requested? 5174
A. No, sir, that is instructions in our circular to that effect.

Q. In other words, you didn't send them new bills? A. No, sir.

Q. You did not, of course, see those bills? A. No, sir.

Mr. Gray: May I be allowed, if Your Honor please, when the witness secures the information that I have requested, to recall him for further cross-examination upon those points?

The Court: Will you let me just ask one question——

Mr. Gray: Certainly, sir.

The Court: —of the witness, first? 5175

Mr. Gray: Certainly.

By the Court:

Q. Do you recall the information that Mr. Gray asked you to get for him? A. Yes, sir.

Q. How long would it take you to get it? A. Well, I would say it would take maybe an hour to look that up.

Q. Well, would you be willing, taking your time to do it, to come back this afternoon when you are ready—— A. Yes, sir.

5176 *Arthur C. Pritchard—For Amici Curiae—Cross*

Q. —with the information?

The Court: And unless Mr. Gahagan now persuades me to the contrary, I would probably interrupt any witness on the stand and let this witness go on for that further cross-examination.

Were you going to object to it?

Mr. Gahagan: No, sir.

The Court: No.

Mr. Gahagan: Anything that you feel is proper——

The Court: Oh, I feel it is the kind of thing that
5177 I don't like to leave in the air.

Mr. Gahagan: Yes, sir.

Mr. Gray: May I make a suggestion, if Your Honor please, that the stenographer, who would have those several requests, there were three, I think, give to Mr. Pritchard a memorandum of them, so that I don't have to ask him to go back again because he didn't happen to get the thing——

The Court: I think that is an excellent idea, if the stenographer will do it.

Mr. Gahagan: The only request——

Mr. Gray: We are at your usual recess time. Therefore, it won't interrupt the business of the
5178 Court.

Mr. Gahagan: The only request I do make, sir, is that if these additional records, such as instructions coming from the filing department, are not kept under the actual supervision of this witness, that the person who does know about the records and is familiar with the records be produced to testify as to them, sir.

Mr. Gray: I have no objection if he wants to bring somebody else in.

Mr. Gahagan: I think that should be in the discretion of Mr. Pritchard, sir.

The Court: The first thing we will do is have Mr. Pritchard come back here, because he is on the stand,——

Mr. Gahagan: All right, sir.

The Court: —with the information.

Mr. Gahagan: Yes, sir.

The Court: Then if we need another witness we will tend to that when we get to it.

Mr. Gahagan: All right, sir. I have just one question I would like to clear up while it is fresh in my mind. 5180

The Court: Will you do it?

Redirect Examination by Mr. Gahagan:

Q. Mr. Pritchard, before you met me on the morning of the last trial, as you have told Mr. Gray, had there been an investigation made at your bank, sir? A. Yes, sir, as to—yes, sir, there had.

Q. But you just met me on the morning—— A. Yes, sir.

Q. —of the last trial—— A. Yes, sir.

Q. —is that right, sir? A. Yes, sir.

Q. Just the morning you went on? A. Yes, sir.

Mr. Gahagan: I just want to clear that up, sir. 5181

The Court: All right, ladies and gentlemen, we will go to lunch now and come back, if you will, so as to be in the court room at quarter past two, or as near that as possible for you.

ARTHUR C. PRITCHARD, recalled:

Recross Examination by Mr. Gray:

Q. Mr. Pritchard, first of all, can you tell us when the records that we discussed before, prior to May 1st, 1936, were

destroyed?, A. Yes, sir. Well, according to the filing department records, we have the records of numbers from January, 1936, up to the present time.

Q. You have them? A. Yes, sir.

Q. Then the records between January and May, 1936, were not destroyed? A. No, sir.

Q. Were the records before January 1st, 1936, destroyed? A. Yes, sir.

Q. And when were they destroyed? A. The records were destroyed on February 6, 1940.

5183 Q. That is, the records before January 1st, 1936? A. Yes, sir.

Q. Now, having the records from January 1, 1936, on, your other record having begun May 1st, will you tell me what, if any, shipments of $1,000 bills were made to the Marine Branch of the Guaranty Trust Company in Atlantic City, between January 1, 1936, and May 1, 1936? A. I have prepared a record from our original records of May up to the end of December, but I haven't had time to prepare January to May.

Q. Are they too extensive to go through them and tell us? You were asked to give—— A. Yes, sir, the balance of the year, which I have, from May——

5184 Q. I understand that. If you will recall, Mr. Pritchard, when you told us about the records from May 1st, you said you had another means of ascertaining those shipments. A. Yes, sir; that was my identification.

Q. Have you looked into it and found out what they are? A. Yes, sir. I only have a record from May to December; I haven't taken a record of shipments from January to May.

Q. Have you them with you here? A. Yes, sir, I have.

Q. Will it take long to answer my question by examining them? A. I would have to look all through our whole records of shipments, Mr. Gray, to find out.

Q. Well, I thought you would have done that when you found the records. You can't tell us now, then, what shipments of $1,000 bills were made to the institution that I have mentioned between January 1st, 1936, and May, 1936? A. No, sir.

Q. All right, let's pass that for the moment. By the way, you were asked when you were on the stand, from May 7th on; can your tell us from May 1st to May 7th what, if any, shipments of $1,000 bills were made? That is in that batch of papers you had here this morning. A. Yes, sir. I am quite sure the May records were examined. I don't believe 5186
there was anything from May 1st to May 7th.

Q. Did you examine them? A. No, sir, I wouldn't say I did.

Q. And you don't know, do you? A. No, sir, I couldn't say I do.

Q. All right, let's pass that. Now, the last shipment which was referred to when you were here on the stand before was some time in August, and if I remember correctly, August 8, 1936. Have you given us all the shipments of $1,000 bills that were made to that institution between May 7th and August 8th, in your direct examination? A. To the end of the year, yes, sir.

Q. I beg your pardon? A. From May to the end of the 5187
year?

Q. No. You purported, or, rather, you answered—I don't want to characterize your testimony—you answered certain questions and identified certain shipments between May 7th and August 8th, of 1936. Are they all of the shipments made during that period? A. Yes, sir, according to our records.

Q. Have you examined the records? A. Yes, sir, most of them.

Q. Well, now, did you, yourself, examine the record between May 7th, and August 8th, and can you, of your own knowledge, tell us that the shipments that you have referred

to are all of the shipments that were made? A. No, sir, I wouldn't say I examined all of them, Mr. Gray.

Q. Then there may be other $1,000 bill shipments? A. I relied on my assistants for that information.

Q. All right, let's come down to after August 8th. Are you not relying on your assistants in answer to the question about after August 8th? A. I didn't quite hear that, Mr. Gray.

Q. I am going to ask you this question, and ask you whether you can answer it of your own knowledge, and by
5189 "of your own knowledge," of course, I mean from an examination of your records made by yourself. What other shipments were made to the Marine Branch of the Guaranty Trust Company at Atlantic City, New Jersey, between August 8, 1936, and the end of the year, of $1,000 bills? A. Yes, sir. That is according to our records of the number of bills shipped.

Q. Do you have your records there? A. Yes, sir.

Q. Answer the question, please. A. That is from May 7th to August 8th?

Q. No, pardon me. I am afraid you don't listen to me, Mr. Pritchard. You told me that you could not tell me that of your own knowledge, so I passed it——

5190

The Court: Well, let's go back to it, Mr. Gray.

Mr. Gray: All right.

By Mr. Gray:

Q. Can you tell me of your own knowledge—and I include in your own knowledge, any examination that you have made or can now make of your own records—whether any other $1,000 bill shipments were made to the Marine Branch of the Guaranty Trust Company in Atlantic City, New Jersey, between May 7th, 1936, and August 8th, 1936, other than those you have already testified to? A. No, sir.

Q. What does your answer, "No, sir", mean? You will have to explain that. A. There were no shipments that I know of, Mr. Gray.

Q. Did you examine the records that would show that? A. No, sir.

Q. Then you don't know, do you?

By the Court:

Q. Well, have you the records there? A. Yes, sir.

Q. Will you examine them now? A. Yes, sir.

5192 The Court: If you will excuse me, sir, I want to get along with this.

Mr. Gray: Yes, sir, I understand.

The Witness: Judge, it takes considerable time, you can tell from the mass of records there. It covers all the shipments, and we have to go from the 8th of October, through every sheet, which would have a number of entries on it.

By the Court:

Q. You have to go very far, do you, to tell from your record what was shipped by way of $1,000 bills to the Guaranty Trust Company, the Marine Branch, for the period 5193 from May 7th to August 8th, 1936? A. Yes, sir, that would take several hours, Your Honor, because there are other shipments on the same sheet of numbers to other banks.

Mr. Gray: Then with Your Honor's permission, I will pass that and come to the other one he was definitely asked about.

By Mr. Gray:

Q. You were asked before lunch to ascertain the shipments of $1,000 bills that were made to the Marine Branch

of the Guaranty Trust Company of Atlantic City, New Jersey, between August 8, 1936, and the end of the year. Have you done that? A. Yes, sir.

Q. How long did that take you? A. Well, I have that record, myself.

Q. How long did that take you, I asked? A. That took, I would say, the better part of an hour or an hour and a quarter, and then I had a man check me on it.

Q. Have you there with you the records between those two dates in your hand now? A. Yes, sir.

5195 Q. The document that you have in your hand is your entire record of these shipments during that time, is it? A. Yes, sir.

Q. That is compared then——

(To the Court): I think this is a proper question; your Honor will stop me if it is not.

The Court: Suppose you try it on me, and see how it works.

By Mr. Gahagan:

Q. That, compared with the batch from May to August which you produced this morning—it is quite a slim record, isn't it? A. Yes; there is not as many.

5196 Q. All right; will you let me see the record. A. This is a lead pencil memorandum I made.

Q. No, your record is what I want to see. A. Yes, sir, right here—now wait just a minute; I have the order here.

Q. I am afraid he does not understand me, and I am trying to clarify it—these are the orders from the bank for money? A. Yes, the records we have to get from our——

Q. Then these are not your record of shipments; those are contained in that bulk of papers on the table? A. Yes, sir.

Q. All right; please try to get my question so there won't any of us be confused—did you go over these during the re-

cess time to find out what $1000 bills were shipped between August 8, 1936, and the end of the year to the parties I have indicated? A. Yes, sir.—I did not go over all of them, Mr. Gray; I did not have time. I went over some of them.

By the Court:

Q. Well, did you have somebody else go over the rest of them? A. Yes, sir.

By Mr. Gray:

5198

Q. Under your supervision? A. Yes, sir.

Q. All right. I am willing that you should, for the sake of brevity, take your memorandum that you have there and tell us after August 8th when the next shipment of $1,000 bills was made. A. After August 8, 1936?

Q. After August 8th. A. Yes, sir. Now, the next memorandum we have is September 12th.

Q. Well, don't say "next memorandum." Tell me when the next shipment was made. A. The next shipment was September 12th, fifteen $1,000 notes.

Q. What is the next shipment? A. The next shipment was made October 5, 1936,—that is $1000 notes.

5199

Q. When was the next one? A. The next is October 13, 1936, forty five $1000 notes.

Q. What was your next one? A. The next one was December 29, 1936, ten $1000 notes.

Q. And that constitutes all of the $1000 bills that your records show were sent to the Marine Branch of the Guarantee Trust Company between August 8, 1936, and within that year 1936; is that correct? A. Yes, sir.

Q. And as supporting those you have produced—so that I may get on the record what else he has produced—a letter of September 11, requesting, among other things, fifteen $1000 bills; the letter of October 3, 1936, requesting six

notes; the memorandum of a shipment of forty-five notes on October 13, 1936, and a letter of December similar to the other letters that we have, requesting 000 bills; is that right? A. Yes, sir.

Court:

Are there not notations on the letters showing the nts? A. Yes, sir, they are marked the same as the s letters.

Mr. Gray: I said "similar to the other letters."

The only other thing I requested of this gentleman, if your Honor please, that he has got—I think we are entitled to know what shipments were made between January 1st and May 1st, 1936, and I am going to ask Your Honor to instruct him to ascertain them and come in tomorrow, when he can answer it.

The Court: He says it will take him a couple of hours.

Mr. Gahagan: Then there will be no objection from the Government to the order and the way you want to put the witness on when he has ascertained that at his own good time, and has had a chance to look over the records. That is satisfactory, sir.

Court:

You say it will take you about two hours to get that ation? A. Yes, Your Honor.

The Court: Is there any objection to his using clerical assistants in doing this work?

Mr. Gray: No, no; I want at the facts. We don't care how he gets at it.

The Court: Then with such assistance as you can summon, will you get that information?

The Witness: Yes, sir.

The Court: Would you like to come in tomorrow morning or would you like to come in by quarter past four today?

The Witness: I believe I can get here; yes, sir.

The Court: When you come in, we will interrupt once more, because I would like to finish with the witness on the stand.

Mr. Gahagan: May I ask one more question, sir, to clear up something?

The Court: You may. 52

By Mr. Gahagan:

Mr. Gray asked you, I believe, sir, whether these particular letters—and if you do not understand me—whether these particular letters were the only records you had in your bank of recording shipments. Now I want to ask you——

Mr. Gray: I am sorry; I object to that now, because I did not make that statement.

Mr. Gahagan: "The entire records"—he asked the question. I think I will stand on the record. And the witness answered "yes, what I have in my hands is the entire record." 52

Mr. Gray: Well, he changed that afterwards.

Mr. Gahagan: That is the only point I want to bring out.

Mr. Gray: There is no misunderstanding about that at all.

The Court: Go ahead.

By Mr. Gahagan:

Q. The records that I show you—the records—indicating a pile of records approximately fourteen inches thick—do those records reflect the shipment of $1000 bills to your various bank, Mr. Pritchard? A. Yes, sir.

Q. And are those records for the year 1936, sir? A. Yes, sir.

Mr. Gahagan: Thank you; no further questions.

The Court: Now, Mr. Foreman, and ladies and gentlemen of the jury, when you listen to evidence, you consider the extent to which you believe it, and consider the importance of that evidence from the standpoint of its relevancy to the charge contained in the indictment. When you hear a good deal of testimoney about records, you should always have in mind the real issue in this case, the real charge contained in the indictment.

(To the Witness): You may leave the stand.

Mr. Gahagan: Your Honor, my associate—Mr. Gray, I believe, asked from January 1st to May 1st. I would like the date of that request right till the very date of the shipment of May 7th so that it will be complete—a complete picture for 1936.

The Court: That is right; that is right.

The Witness: All right, sir.

Mr. Gray: If your Honor please, I did not ask for that because the witness had already answered that he had examined the records—

The Court: Now, we will go along.

. . . . . .

By Mr. Gray:

Q. Mr. Pritchard, have you examined the records of the Federal Reserve Bank to see whether any one thousand dollar bills were sent to the Marine Branch of the Guarantee Trust Company at Atlantic City between January 1 and May 7, 1936? A. Yes, sir.

Q. Have there been? A. There were no other shipments, Mr. Gray.

Q. No shipments at all? A. No shipments of thousand dollar bills to the Marine Branch, no, sir.

Q. And your records prior to January 1st, 1936, are destroyed? A. Yes, sir.

Q. Those you can't tell us about.

Mr. Gray: Well, I think that is all.

Mr. Gahagan: I believe, Your Honor, that there were some other questions that were going to be asked, Mr. Pritchard went away for the specific purpose of finding out throughout the year, and I was wondering whether or not——

5210

Mr. Gray: Oh, I thought he answered that when he came back the second time. We got that on his second trip. You ask him anything you want, Mr. Gahagan.

Mr. Gahagan: All right, sir, just one question, so that I can understand it, Mr. Pritchard.

Redirect Examination by Mr. Gahagan:

Q. The first shipment of thousand dollar bills in 1936 was on what date? A. May 7, 1936.

Q. Between January and May, no shipments? A. No shipments, no, sir.

Q. And after that date, sir, what shipments were made? 5211

Mr. Gray: After what time?

By Mr. Gahagan:

Q. After May 7, 1936, what shipments were made?

Mr. Gray: If Your Honor please, are we to go all over this again? He has given us every single shipment, checked it, dated it, and everything else.

Mr. Gahagan: Well, I presumed that this work that Mr. Pritchard had been doing, I believe, all morning and yesterday, sir, was for the purpose of being sure that we had everything in the record.

5212 *Colloquy*

Mr. Gray: He has given it to us, all. He went back for one thing.

The Court: My recollection—and, ladies and gentlemen of the jury, you don't pay too much attention to the Court's recollection, except as I have to have one for the purpose of ruling—I had understood that when Mr. Pritchard was on the stand before he gave us what the records show as to one thousand dollar bills for the period beginning with May 7th and going down eventually through the end of the year 1936. The matter arose in this way: He first put in his testimony with reference to the period May 1 to May 29. 5213 That was supplemented and carried on down to the end of the year. There remained the question as to whether there were any shipments between January 1 and May 7, 1936, both inclusive, and he has brought that information now. Now, that is my recollection.

Mr. Gray: That is absolutely correct. I have here all the details.

Mr. Gahagan: Your Honor, with respect to the record, I haven't the record before me, but I do recall that we have had another witness, Mr. Seiwell, in between, and I would like to, when this witness is on the 5214 stand, complete that record, so that——

The Court: Well, I think it is repetition, but I am going to let you do it.

Mr. Gahagan: All right, sir.

Mr. Gray: Well, if Your Honor please, let me state more fully my objection to his doing that. Your Honor's recollection, may I say, was absolutely clear. Mr. Pritchard at his first time on the stand gave just certain dates that the District Attorney asked for. I asked him to bring me the dates for the rest of the year. He did so. We have that all in detail. I then, he being unable to tell us about between the first of Janu-

ary and May 7th, asked him to bring that. He came here this morning. He says there is no such record. Now, the thing that I am objecting to is the District Attorney, every time, wanting to go back——

The Court: Now,——

Mr. Gray: —and wanting to review all of his testimony.

The Court: —I am prepared to rule without further argument. Mr. Gahagan may show it again if he wants to, and that I duly emphasize.

Mr. Gray: And then I may cross examine again about it? 5216

The Court: Yes.

By Mr. Gahagan:

Q. Could you briefly state the shipments, including May 7th to the end of the year, sir? A. Yes, sir.

Q. And the amounts, of course. A. Yes, sir.

Q. Thank you, Mr. Pritchard. A. There was shipped to the Marine Branch of the Guarantee Trust Company at Atlantic City ten thousand one thousand dollar bills on May 7, 1936.

We shipped ten thousand thousand dollar bills on May 9, 1936. 5217

We shipped ten thousand thousand dollar bills on May 29, 1936.

We shipped twenty-five one thousand dollar bills on June 15th, 1936.

We shipped ten one thousand dollar bills on August 7, 1936.

We shipped ten one thousand dollar bills on August 8, 1936.

We shipped fifteen one thousand dollar bills on September 12, 1936.

We shipped six thousand one thousand dollar bills on October 5, 1936.

5218 *Arthur C. Pritchard—For Amici Curiae—Recross*

We shipped forty-five thousand one thousand dollar bills on October 13, 1936.

Q. May I just—you said forty-five thousand one thousand dollar bills? A. Yes, sir.

Q. Do you mean forty-five thousand one thousand dollar bills? A. Yes, sir.

Q. Or do you mean forty-five thousand—— A. One thousand dollar bills.

Q. Don't you mean forty-five one thousand dollar bills, sir? A. Yes, that is what I mean.

Q. Forty-five one thousand dollar bills? A. Yes, sir,
5219 forty-five thousand thousand dollar bills—forty-five, I should say, pardon me.

Q. I am sorry, sir.

The Court: Oh, well,——

The Witness: I get your point, sir.

Mr. Gahagan: All right, sir.

The Court: —the jury can understand about that. Even I can.

Mr. Gahagan: Yes, sir.

The Witness: We shipped ten one thousand dollar bills on December 29, 1936.

Now, that completes the list.

5220 Mr. Gahagan: All right, thank you, sir.

Recross Examination by Mr. Gray:

Q. Well, now, let's see, what is the total. I forgot you were a little hard of hearing; what is the total of them all? A. What is the what?

By the Court:

Q. What do they all add up to, is what he is asking you. Have you added them? A. Yes, sir, one hundred and fifty-one thousand.

Mr. Gray: All right, that is all, Mr. Pritchard.
The Witness: All right, sir?
The Court: That is all, thank you, Mr. Pritchard.

(Signature card of account of Roger S. Firestone and Mary D. Firestone, Government's Exhibit 4 in the second criminal trial, was marked Amici Exhibit 150.

Recordak picture for account of Roger S. and Mary D. Firestone for month of April, 1937, Government's Exhibit 5 in the second criminal trial, 5222
was marked Amici Exhibit 151.

Original deposit slip of Mary D. Firestone, dated April 14, 1937, Government's Exhibit 6 in the second criminal trial, was marked Amici Exhibit 152.

Cashier's check in the sum of $1000.00, dated 4/14/37, from the St. Augustine National Bank to the order of Pinellas Groves, Inc., Government's Exhibit 7 in the second criminal trial, was marked Amici Exhibit 153.

Check dated April 14, 1937, from Mary D. Firestone to the order of The St. Augustine National Bank in the sum of $1000.00, Government's 5223
Exhibit 8 in the second criminal trial, was marked Amici Exhibit 154.

Recordak picture of check dated April 14, 1937, payable to Kathryn C. Page, in the amount of $1000, signed Mary D. Firestone, Government's Exhibit 9 in the second criminal trial, was marked Amici Exhibit 155.

White original of insurance declaration on a shipment to the Federal Reserve Bank at Jacksonville, Government's Exhibit 10 in the second criminal trial, was marked Amici Exhibit 156.

Yellow copy of insurance declaration on a shipment to the Federal Reserve Bank at Jacksonville, Government's Exhibit 11 in the second criminal trial, was marked Amici Exhibit 157.

Pink copy of insurance declaration on a shipment to the Federal Reserve Bank at Jacksonville, Government's Exhibit 12 in the second criminal trial, was marked Amici Exhibit 158.

Registry receipt, Government's Exhibit 13 in the second criminal trial, was marked Amici Exhibit 159.

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Ledger sheet, Government's Exhibit 14 in the second criminal trial, was marked Amici Exhibit 160.

Record book of the Federal Reserve Bank of Jacksonville from August, 1936, to October, 1938, Government's Exhibit 15 in the second criminal trial, was marked Amici Exhibit 161.

Page of a book labelled incoming shipments, for the date of April 17, 1937, Government's Exhibit 16 in the second criminal trial, was marked Amici Exhibit 162.

Advice dated April 17, 1937, labelled incoming

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shipments reported for insurance, Government's Exhibit 17 in the second criminal trial, was marked Amici Exhibit 163.

Page of book, Government's Exhibit 18 in the second criminal trial, was marked Amici Exhibit 164.

Letter dated May 6th, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J., to Federal Reserve Bank of Philadelphia, Philadelphia, Pa., Government's Exhibit 19 in the second criminal trial, was marked Amici Exhibit 165.

5227

White copy of debit ticket dated May 7, 1936, Government's Exhibit 20 in the second criminal trial, was marked Amici Exhibit 166.

Brown copy of debit ticket dated May 7, 1936, Government's Exhibit 21 in the second criminal trial, was marked Amici Exhibit 167.

Blue copy of debit ticket dated May 7, 1936, Government's Exhibit 22 in the second criminal trial, was marked Amici Exhibit 168.

Pink copy of debit ticket dated May 7, 1936, Government's Exhibit 23 in the second criminal trial, was marked Amici Exhibit 169.

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Photostatic copy of a record showing serial numbers of bills shipped to out of town banks, Government's Exhibit 24 in the second criminal trial, was marked Amici Exhibit 170.

Letter dated May 8, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J. to Federal Reserve Bank of Philadelphia, Government's Exhibit 25 in the second criminal trial, was marked Amici Exhibit 171.

Letter dated May 28, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J. to Federal Reserve Bank of Philadelphia, Government's Exhibit 26 in the second criminal trial, was marked Amici Exhibit 172.

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Letter dated June 11th, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J. to Federal Reserve Bank of Philadelpha, Government's Exhibit 27 in the second criminal trial, was marked Amici Exhibit 173.

Letter dated August 6th, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company,

Atlantic City, N. J. to Federal Reserve Bank of Philadelphia, Government's Exhibit 28 in the second criminal trial, was marked Amici Exhibit 174.

Letter dated August 7th, 1936, from Marine-Atlantic Safe Branch, Guarantee Trust Company, Atlantic City, N. J. to Federal Reserve Bank of Philadelphia, Government's Exhibit 29 in the second criminal trial, was marked Amici Exhibit 175.

5231 Bank signature card for Parkwood Corporation signed "Eva Fox", dated March 16, 1936, Government's Exhibit 30 in the second criminal trial, was marked Amici Exhibit 176.

Check dated May 2, 1936, in the amount of $2500.00, from Parkwood Corporation, Eva Fox to the order of Belle Fox, Government's Exhibit 31 in the second criminal trial, was marked Amici Exhibit 177.

Check dated May 5, 1936, from Parkwood Corporation, Eva Fox, to the order of Cash in the amount of $5000.00, Government's Exhibit 32 in the second criminal trial, was marked Amici Exhibit 178.

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Check dated May 6, 1936, in the amount of $2500.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 33 in the second criminal trial, was marked Amici Exhibit 179.

Check dated May 7, 1936, in the amount of $2500.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 34 in the second criminal trial, was marked Amici Exhibit 180.

Check dated May 8, 1936 in the amount of $5000.00, from Parkwood Corporation, Eva Fox,

to the order of Cash, Government's Exhibit 35 in the second criminal trial, was marked Amici Exhibit 181.

Check dated May 9, 1936, in the amount of $2500.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 36 in the second criminal trial, was marked Amici Exhibit 182.

Check dated May 12, 1936, in the amount of $2500.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 37 in the second criminal trial, was marked Amici Exhibit 183. 5234

Check dated May 14, 1936, in the amount of $2500.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 38 in the second criminal trial, was marked Amici Exhibit 184.

Check dated June 11, 1936, in the amount of $15,000.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 39 in the second criminal trial, was marked Amici Exhibit 185.

Check dated June 16, 1936, in the amount of $15,000.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 40 in the second criminal trial, was marked Amici Exhibit 186. 5235

Check dated June 29, 1936, in the amount of $17000.00, from Parkwood Corporation, Eva Fox, to the order of Cash, Government's Exhibit 41 in the second criminal trial, was marked Amici Exhibit 187.

Three block sheets of the Marine-Atlantic Safe Branch of the Guarantee Trust Company, Atlantic City, for May 8, 1936; Government's Exhibit

42 in the second criminal trial, were marked Amici Exhibit 188.

Block sheets dated May 7th, 1936, of the Guarantee Trust Company, Government's Exhibit 43 in the second criminal trial, were marked Amici Exhibit 189.

Block sheets dated May 9, 1936, of the Guarantee Trust Company, Government's Exhibit 44 in the second criminal trial, were marked Amici Exhibit 190.)

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TABLE OF STIPULATED EXHIBITS FROM SECOND TRIAL

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AFTER RECESS

Present: Counsel as before noted.

Mr. von Hölst: Mr. Master, it appears that Miss Asselin won't be here. May I just explain that when we asked to call Marguerite Asselin we assumed that she was still in the employ of Senator O'Mara's firm, and that is why we dispensed with the subpoena. I

today for the first time that she is not in their
oy.

Ir. Harris: I thought you knew she had gone.

Ir. von Holst: Therefore, we did not have a sub-
a on her.

ow, it seems to me, Master, that what we ought
—and I make this just as a suggestion—is that
ould adjourn, in the meantime get a subpoena on
guerite Asselin, and arrange for a return day to
her testimony and that of Judge Buffington, and
ssible, the Foxes and Mary Mahoney, and wind it
t that time. It is impossible to wind up at this
in view of the Fox situation.

he Master: Yes.

Ir. von Holst: Our subpoena was unfortunately
he 16th of November, which according to the
rs is the very day he is to be committed, and it
possibly be that we shall not succeed in getting
ce on him at an earlier date—we will try to—
we can recall the subpoena that has not been
d and we can get out another subpoena right
with the Thursday day of next week, and then
the whole thing up; but if we cannot get service
e Thursday, then it seems to me that we shall
to wait until he is in one place, where he will be
e next few years, in a fixed place, and then make
gements for taking his testimony, either by writ
beas corpus or else taking the testimony at the
entiary. That is a matter we will have to look
I am not prepared to answer myself whether a
would run for that purpose.

e Master: I think the Department of Justice
arrange that for you or else tell you it could
done.

. von Holst: Yes. Well, frankly, Master, we
ot had a chance to go over and talk to Mr. Sulli-

van, and we will do the very best we can in that matter. We had fully hoped and expected to wind up at this session, and I think we have, all except these few loose ends.

Mr. Harris: If you will let us know, then, what day, we will hold Thursday and Friday open.

Mr. von Holst: And as soon as we learn whether we can or cannot——

Mr. Harris: If you can't——

Mr. von Holst: —we will communicate with you by telephone.

(Discussion off the record.) 5246

Mr. Harris: We will hold Thursday and Friday, and Monday and Tuesday open, and you will let us know whether it will be Thursday or Friday; or Monday or Tuesday, as soon as you can.

Mr. Thiess: As soon as we find out. Will you in the meantime look over the testimony we gave you of Mrs. Mahoney and advise as whether you will be willing to stipulate?

Mr. Harris: Oh, yes, we will let you know by Wednesday.

The Master: You are referring now to next week, are you not? 5247

Mr. Thiess: That is, provided we can arrange to do that.

The Master: Yes.

Mr. von Holst: Provided we can get the subpoena served on Fox for that date.

The Master: Very well, we will expect to hear from you and you will take care of Judge Buffington, will you?

Mr. von Holst: Yes.

Mr. Thiess: Now, there are some other exhibits that we would like to put in at this time.

(Discussion off the record.)

5248 *Colloquy*

Mr. Thiess: We are going to put in this tabulation of the Government exhibits.

Mr. McCullough: Why not write a letter. He can fill them right in. Write me a letter and I will check them.

Mr. Harris: You and Mac will have to work that out with the reporter.

Mr. Neuman: There is just one other thing that we would like to have. As he rewrites the testimony of these witnesses, when he comes to the Government exhibit number, put in——

5249

Mr. Harris: Both.

Mr. Neuman: —the new Amici exhibit number.

Mr. von Holst: You see the reason for that. Otherwise the witnesses' testimony will be wholly incomprehensible.

Mr. Harris: That is right, put it in in brackets.

Mr. von Holst: That is right.

Mr. Thiess: There is another thing about these Government exhibits. Some of those exhibits are very voluminous.

Mr. Harris: Have we got them all?

Mr. Thiess: You have got them all, we have a set and we have two other sets that we can put in evidence for the Master.

5250

Mr. Harris: Which ones?

Mr. von Holst: Well, the block sheets, the ledger sheets of the banks——

Mr. Thiess: You have a photostatic copy of all those exhibits. So have we. Now, what I would suggest is that those go in as physical exhibits and not be incorporated in the record. They will be physical exhibits that will stay with the record.

Mr. Harris: I don't see any objection to that. I wish we had started one way and kept to it, though.

(Discussion off the record.)

5251

The Master: In connection with the matters still pending, as to the admission of the Steedle diary, I think the only possible ground on which it could be admitted would be under the Federal statute, and I want to direct your attention to that, to consider that.

Mr. Harris: You mean something made in the ordinary course of business, as a record made in the ordinary course of business?

The Master: Well, yes, similar to that.

Mr. Harris: All right, we will look that statute up.

The Master: That is the only thing—it is a little broader than any other statute that I know of.

5252

Mr. von Holst: I was deferring my offer of that, if the Master please, until the last witness has identified it.

The Master: That is all right.

Mr. von Holst: I would like to look further into the authorities. I have the belief that it may be the doctrine of independent relevancy, which Wigmore speaks of quite extensively——

The Master: Well, I just wanted to be sure that you would refer to that statute.

Mr. von Holst: Yes.

The Master: There may be other grounds. That is the only one I have thought of.

5253

Mr. von Holst: In the interim, would the Master keep that diary in the safe?

The Master: Yes. Where is it, by the way?

(The Steedle diary was given to the Master.)

Mr. Harris: Well, then, I guess we are through.

The Master: There is nothing else, then, gentlemen, today, is there?

Mr. von Holst: There are a good many loose ends that we can look over thoroughly before we get back.

The Master: Probably you and counsel can adjust that.

MARGUERITE HELEN ASSELIN, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. Please state your full name. A. Marguerite Helen Asselin.

Q. And your residence, Miss Asselin? A. 319 Summit Avenue.

Q. And what is your occupation? A. Stenographer.

5255 Q. Did you work for Thomas G. Haight during his lifetime? A. I did, for thirteen years.

Q. For how many years? A. Thirteen years.

Q. When did Judge Haight die? A. January 26th of this year.

Q. And did you work for those thirteen years continuously prior thereto—— A. Yes.

Q. —for Judge Haight? A. From May 26th, 1929.

Q. And in what capacity did you work for Judge Haight? A. Private secretary.

Q. Now, to your knowledge did Judge Haight keep charge diaries? A. Yes, that is, to charge his time, yes.

Q. To charge his time for professional services? A. Yes.

5256 Q. And did you see these diaries? A. Yes, I kept them a good deal.

Q. Were they entered in his handwriting or did you type them? A. Some—well, the entries in the books were in his handwriting and in my handwriting, if he worked out of the office, he would tell me how much time he spent, and I wrote it down in the diary.

Q. And all these entries, then, were either in your writing or his? A. Yes, sir.

Q. In these diaries? A. Yes, sir.

Q. And what would these diaries show? A. Just the name of the case and the amount of time he spent.

Q. Did it show the—— A. Whether he was working on a brief—the letters, of course, I would have record of in my book.

Q. Yes, but the diaries showed the nature of the services—— A. No,——

Q. —and the time? A. Just the time—well, it might be the brief, or preparing for argument, conferences.

Q. Now, were bills made up directly from those diary entries? A. No, I typed out little slips which were lodged with our bookkeeper.

Q. And you call those charge slips? A. Yes.

5258

Q. Did those charge slips contain all the entries that were on the diaries? A. Yes, sir.

Q. Verbatim? A. Because I copied them from the diary.

Q. So they contained verbatim what the diary entries were? A. Yes.

Q. And then the bills were made up from those charge slips? A. Yes.

Q. Now, where are those diaries now? A. Burned up, I imagine.

Q. When were they burned up? A. When I cleaned up—well, I don't know whether they are burned up, but I cleaned up Judge Haight's desk after he died and I threw it all out, because they dated back to '24, '25.

5259

Q. You threw them all out, that is, those from '24? A. Oh, every diary that was there, I don't remember the exact date, but there were a lot there, from before I came to work for him.

Q. Did you do that on your own responsibility? A. Well, I was given the task of cleaning out his desk.

Q. Did anyone tell you to destroy the diaries? A. No, sir.

Q. So as far as the throwing out of the diaries is concerned, you did that on your own initiative? A. Yes, sir.

Q. Now, with respect to these charge slips, are those still in existence? A. When the bill was paid the charge slips

were destroyed, because the bills contained all the details of the charge slips. In most cases Judge Haight's bills were itemized. I kept them until the check came in in payment of the bill, then I destroyed them.

Q. And would the bill then contain everything which was in the diaries? A. It would be copied from the charge slip —if it was a detailed bill.

Q. So it would not necessarily contain everything that the diary contained? A. Not unless it was detailed.

Q. Did Judge Haight in his lifetime say anything to you about destroying these diaries? A. No, sir.

5261 Q. Did these diaries contain any notations other than for the purpose of making charges? A. No, sir.

Q. Did they show where Judge Haight was at any times? A. Well, it might be at a conference in New York, at a person's office, that is all.

Q. Did they show the names of those with whom conferences were held? A. Not necessarily. Sometimes he would tell me that and I would write it in my book. He might go over to a conference and I might not know when he went who he was going to confer with.

Q. Now, you yourself knew, did you not, at the time you destroyed these diaries that this investigation was in prog-

5262 ress? A. Yes.

By the Master:

Q. Were all Judge Haight's diaries kept in his desk, Miss Asselin? A. Yes, sir. I never knew what was in his desk until I went to clean it out.

By Mr. von Holst:

Q. Miss Asselin, there are in evidence as Amici Exhibit 67, bills rendered by Judge Haight.

Mr. Harris: In the Root case.

By Mr. von Holst:

Q. In the Root case. A. Yes.

Q. I wish you would look through these bills, glance over them, and tell us whether those are what you have described as the detailed type of bills that would contain the entries in the diaries.

Mr. Harris: Everything that was in the diary, you mean?

Mr. von Holst: Yes, that would reflect the diary 5264
entries.

(The witness examined the bills.)

A. Yes, well, of course, the writing, writing letters would be in my own memory, I mean, from the carbon copies of the letters. Those would not appear in the diary.

By Mr. von Holst:

Q. No. A. They would appear on the time slips but not in the diary.

Q. I understood you to say—— A. And the telephone calls. 5265

Q. Yes, A. I kept a record of all those.

Q. There were two types of bills rendered; some were detailed bills? A. Yes, some people wanted itemized bills, and other didn't want them.

Q. And others that were not itemized? A. Yes, sir.

Q. I understood you, further, that the itemized bills contained the entries—— A. Entries.

Q. —from the diaries? A. From the diaries, and also the letters and the telephone calls.

5266 *Marguerite Helen Asselin—For Amici Curiae—Cross*

Q. Yes, which would not be in the diaries? A. From my records—no, sir.

Q. Now, will you look through these bills, please, and see whether these are what you have termed the itemized type of bills? A. Yes, they are.

(The witness examined the bills.)

The Witness: Yes.

Mr. von Holst: No further questions.

5267 *Cross Examination by Mr. Harris:*

Q. Miss Asselin,—— A. Yes, Mr. Harris.

Q. —do I understand your testimony to be that the itemized bills to which your attention has been called contained everything—— A. In the nature of the Judge's——

Q. Just a minute. A. Pardon me.

Q. —a verbatim transcript—— A. Well, I might change the wording——

Q. Just a minute, will you pardon me, please? A. Surely.

Q. Do they contain a verbatim transcript of what was in the charge slips? A. They do.

Q. Yes. A. Word for word.

5268 Q. Yes.

By the Master:

Q. Miss Asselin, did you say you do have a record, or did have a record of letters and telephone calls made by Judge Haight? A. Well, I just copied the record from the carbon copy of the letter and my telephone operator always gave me the list of Judge Haight's calls.

Q. Well, are those records still in existence? A. The carbon copies of the letters are, as far as I know. I am not in the office any more.

Q. And the record of the telephone calls? A. No, they wouldn't be there.

Q. What? A. They were just little daily slips.

Q. I don't suppose you remember when you first heard of Morgan Kaufman in the Root case, do you? A. I have no earthly idea of the date, sir.

By Mr. Harris:

Q. Well, you at least knew or had heard that he was in the case before it was argued in the Circuit Court of Appeals,—— A. Yes, sir. 5270

Q. —had you not? A. Yes, sir.

By Mr. von Holst:

Q. When was that case argued in the Circuit Court of Appeals, Miss Asselin? A. I have no idea.

By Mr. Harris:

Q. But you do recall—— A. I do recall——

Q. —it was before—— A. The case.

5271

Q. Before the Judge argued it in the Circuit Court of Appeals you had heard of Morgan Kaufman in the case? A. Yes, sir.

By Mr. von Holst:

Q. Did you tell anyone in your office at that time that you were destroying the diaries, before you did? A. No, sir.

Mr. von Holst: No further questions.

Mr. Harris: No further questions.

5272 **Transcript of Hearing, November 18, 1942**

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Wednesday, November 18, 1942, at 2:00 o'clock P. M., Eastern War Time.

Present:

5273 THOMAS RAEBURN WHITE, Esq., *Master*.

J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois) of Amici Curiae.

SIDNEY NEUMAN, Esq. (77 West Washington Street, Chicago, Illinois) Counsel accompanying Amici Curiae.

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey).

JOHN R. MCCULLOUGH, Esq. (100 Broadway, New York, N. Y.), representing Universal Oil Products Company.

5274

Evidence on behalf of Amici Curiae (continued).

The Master: While we are waiting, I will report that I have certain documents which I have received. That I don't think is of any importance, but I show it to you; it is a letter just sent to me in that envelope, without any letter. It was a letter to Judge Davis by Mr. Stokley. You will see it. I don't think it is of any importance.

5275

Mr. McCullough: May we look at it?

The Master: Sure, look at it.

Mr. Thiess: I wonder whether it would not be well to just tell counsel that in view of the fact that you have just read this letter from Mr. Stokley, we have contacted the hospital and we have got a certified copy from the hospital of his operation, and the operation occurred in 1936. We would like to offer this certified copy in evidence.

The Master: Second month, 17th, 1936?

5276

Mr. Thiess: Yes. We offer a copy from the records of the Florida Sanitarium and Hospital, as Amici Exhibit 191.

(Certified copy of record of Florida Sanitarium and Hospital, dated 2-17-36, of case No. 16734-S., Mr. Elmer J. Stokley, was marked Amici Exhibit 191.)

The Master: I also report that I have a letter from Judge Buffington saying that he does not have any correspondence, conference notes or docket lists in the matters specified in the letter to him from counsel for Amici, dated November 9, 1942.

5277

Do you wish to put these on the record?

Mr. O'Mara: You sent us copies of that letter, Mr. White?

The Master: Yes.

Mr. Thiess: I think we might as well put that on the record.

Mr. Neuman: Can we put in our letter and then Judge Buffington's reply?

The Master: Yes, all right.

5278 *William Fox—For Amici Curiae—Direct*

Mr. Thiess: I offer in evidence as Amici Exhibit 192 letter under date of November 9, 1942 from the Amici to the Honorable Joseph Buffington, and Joseph Buffington's reply to the Master, Thomas Raeburn White, Esquire, under date of November 13, 1942, as Amici Exhibit 193.

(Letter dated November 9, 1942, from J. Bernhard Thiess and Thorley von Holst, Amici Curiae, to Hon. Joseph Buffington was marked Amici Exhibit 192.)

5279 (Letter dated November 13, 1942, from Joseph Buffington to Thomas Raeburn White, Esquire, was marked Amici Exhibit 193.)

The Master: I also produce from Judge Thompson memoranda for conference in the three cases mentioned in your letter, counsel for Amici, and his docket list for October Term, 1934, which you can examine later, perhaps.

Mr. Thiess: All right.

WILLIAM FOX, having been duly sworn, was examined
5280 and testified as follows:

Direct Examination:

The Master: Will you proceed, Mr. Thiess?

By Mr. Thiess:

Q. What is your full name, Mr. Fox? A. William Fox.

Q. And have you been indicted and convicted by the United States of conspiracy to obstruct justice? A. Yes.

Mr. O'Mara: Mr. Master, I desire to object on the record to the relevancy or materiality of this testi-

mony, and we will proceed, I suppose, under our general arrangement, that I will have a continuing objection to the whole line.

The Master: Yes, it is understood your rights are fully protected.

By Mr. Thiess:

Q. And, Mr. Fox, you are attending here under the custody of a United States Marshal, is that correct? A. Yes, sir.

Q. And where did you reside prior to the time that you surrendered to the Federal authorities in Philadelphia? 5282
A. You mean——

Q. Just prior to——. A. At Woodmere, Long Island.

Q. And who was living there with you? A. Mrs. Fox.

Q. Were your daughters living there with you? A. One of my daughters was living there.

Q. Which one? A. Mona.

Q. Was Belle Fox there? A. No.

Q. Could you tell us where Belle Fox is? A. She is in California.

Q. Whereabouts in California? A. I really don't know. She is visiting with some friends in California. Who they 5283
are, I don't know.

Q. You don't know when she is going to return? A. No, I do not.

Q. How long has she been in California? A. Couple of months, and perhaps more, maybe three months.

Q. And you have no knowledge where she is? A. I don't know at this time where she is. I have been so confused with my own affairs that I haven't kept in touch with her.

Q. Well, do you know where she was the last time you heard from her? A. No, I do not. I haven't received any letter from her, nor have I written her since she has been away.

u know Morgan S. Kaufman? A. I do, sir.
ow long have you known Mr. Kaufman? A. I
—I would know him sometime in 1925 or 1926.
ou ever employ Morgan S. Kaufman as an at-
I did.
ould you just state what particular litigation
l him in as an attorney? A. Why, the company
omething to do with, called the American Tri-
oration, had brought an action in the Middle
ennsylvania, and my patent attorneys in New
was necessary to engage a correspondent in that

ow did you come to employ Morgan S. Kaufman
r you in this Tri-Ergon case? A. Well, as I said
known him sometime, '25 or '26, and I think
curred sometime in '32.
ou suggest to your counsel in New York that
aufman might be the proper man to be retained
ose, or did they suggest him to you? A. I don't
s to how that came about.
ong after you first met Morgan S. Kaufman, in
d you thereafter contact him in a social way as
business way? A. Well, I have known him in

an you recite or tell us where you may have
at capacity? Do you remember the incident of
in Florida? A. Well, I had been to Florida
him there, yes,—I have seen him there, rather.
while you were in Florida and met Mr. Kauf-
know, do you remember whether you ever met
here? A. My recollection was that I had gone
evening and that I was introduced to Judge
not certain of that. I mean, it was a fight that
nighttime,——

The Master: Can you fix the date, Mr. Thiess?

A. —and it wasn't very illuminated.

By Mr. Thiess:

Q. Can you fix the date, about when that occurred, do you know? A. I should say it was the winter of '32 or '33.

Q. Now, were you introduced to Judge Davis by Mr. Kaufman? A. Well, I don't quite recall. There were a half a dozen or more people in the party and I don't remember who did the introducing. 528

Q. Did you visit Morgan S. Kaufman in New York City? A. Yes, as I say, I have known him for years before that and I visited with him, yes, sir.

Q. And can you state the period over which you visited Morgan S. Kaufman in New York City, the years? A. Well, I wouldn't be able to state that.

Q. Can you give us an approximate period? A. Oh, over a period of five or six or seven years.

Q. And could you say about what years that was? Possibly you can refresh your recollection if I suggest to you placing it during the period that the Tri-Ergon cases were on. A. No, I had met him before, long before that. 528

Q. Well, you contacted him officially in New York before the Tri-Ergon cases were on? A. Oh, yes.

Q. And while the Tri-Ergon cases were on were you close to him, in contact, in New York? A. Well, I wasn't close to him; he was just one of my acquaintances.

Q. Well, I meant that you met him in New York during the period that the Tri-Ergon cases were on? A. Yes, I had.

Q. And do you remember that Mr. Kaufman visited at your home, Morgan S. Kaufman? A. I had visited his home and he had visited mine, yes, sir.

Q. But you cannot fix the date of any of those visits? A. No, I can't.

Q. Now, did you move to Atlantic City in July or August of 1935? A. About that time, yes.

Q. Now, at the time that you moved to Atlantic City were you or the companies in which you were interested involved in litigation in the State of New York? A. I was involved in litigation.

Q. And how about the companies that you were involved in? Were they involved in litigation in New York, also?
5291 A. No, I think it was just me that was involved.

Q. Well, can you just describe generally the nature of this litigation, Mr. Fox? A. So much occurred to me from that time to this, sir, that I couldn't bring it all back to my mind now.

Q. Can't you briefly indicate what the character of that litigation was, what claims were being made, and—— A. Well, there was, as I recall it, there was one claim made for rent of a theatre that I had leased in California, and another was for a guarantee that I had given in connection with a theatre in New York.

Q. And how about—wasn't there some litigation by the
5292 Capital Company? A. Well, that is the Los Angeles theatre, yes, sir.

Q. I see. A. I mean, the San Francisco theatre.

Q. Can you state why you moved to Atlantic City? A. Well, I moved there because I was ill and because I had—I knew there were certain judgments coming against me and I wanted time to raise the money to pay them off.

Q. Did you file a petition in bankruptcy in Atlantic City in May of 1936? A. I did.

Q. That was May 29, 1936? A. I don't remember the date. I know it was some time in '36.

Q. Do you remember that you met Morgan S. Kaufman at Atlantic City in early May of 1936, before you filed your petition in bankruptcy?

Mr. O'Mara: Now, if the Master please, I object to counsel leading the witness. I think he has been doing it.

Mr. Thiess: Well, I am trying to shorten this.

Mr. O'Mara: I know, but you are giving him dates and everything else. I object to the leading questions.

Mr. Neuman: The dates are a matter of record.

The Master: You can phrase the question differently. This witness is not really under cross-examination. 5294

By Mr. Thiess:

Q. Do you remember meeting Mr. Morgan S. Kaufman in Atlantic City? A. I may have, but I don't remember it now.

Q. You have no recollection at the present time of meeting Mr. Kaufman at Atlantic City? A. Well, Mr. Kaufman at that time, as I recall it, was an agent for Mrs. Fox, who was trying to sell several of the Tri-Ergon patents that we had, and he may have met with her or myself during the early part of May, I don't know. 5295

Q. Do you remember, Mr. Fox, whether or not Mr. Kaufman came to you to report about this patent matter, the sale of these patents,—— A. He may——

Q. —sometime in 1936? A. He may have.

Q. Do you have any recollection of that at the present time? A. At this time I haven't a recollection.

Q. You remember, do you not, testifying in the criminal case here in Philadelphia, the second case? A. I had testified here, yes.

Q. And I would like to call your attention to the following questions and answers in that case:

5296 "Q. Did you at any time discuss your going into bankruptcy with Morgan Kaufman, sir? A. Yes.

"Q. When, sir? A. Mr. Kaufman visited with me in the early part of 19— of May, 1936, to report to me what progress he was able to make in the sale of certain patents which I have asked him to dispose of, and he then, he informed me then that he could not dispose of them at the price that Mrs. Fox was asking for them, and during that visit I had told them that recently a decision had been rendered in New York in which a judgment was going to be had—in which
5297 a judgment would be entered against me for a million, two hundred and fifty thousand dollars, and I told him that we were trying to raise a bond so that we could take an appeal to that case, and that if we were unable to get the bond I would be obliged to go into bankruptcy." Do you remember so testifying?

A. I don't remember testifying that way, but if you have it on record I suppose it is so.

Q. Does that refresh your recollection that that occurred? A. Well, it does very vaguely, sir. I have gone through so damned much from that day to this that I really—my mind isn't what it might be.

5298 Q. Now, do you have any recollection of again meeting Morgan S. Kaufman at a subsequent time in Atlantic City? A. I have no recollection, but I presume that I did.

Q. Do you remember meeting him in the company of Judge Davis in Atlantic City? A. I do.

Q. Could you state to the best of your recollection at the present time when that occurred and what occurred on that occasion? A. Well, that meeting probably took place towards the end of May.

Q. Of what year, '36? A. Of 1936, yes, sir.

Q. And could you remember at all the substance—how you happened to meet Mr. Kaufman and Judge Davis on that

occasion? A. Well, as I recall it I had—I had a home there that faced the boardwalk at Atlantic City, and Mr. Kaufman and this other gentleman had—were walking by. Whether I hailed them or they hailed me, I don't know. That resulted in our meeting.

Q. And do you remember what was said at this meeting? A. No, I do not, sir.

Q. And the other gentleman that you referred to in your answer, that was Judge Davis, was it? A. That is right.

Q. Did you know Judge Davis at the time? A. Well, as I said before, my recollection is that I was introduced to him at Florida several years before, but I didn't remember 5300 him.

Q. And do you have—you have no recollection of the conversation that occurred at that time between you? A. It was just a general conversation, I guess, as I recall it—as I recall it, I had all these troubles at the time and I think that I had gone into a long, lengthy explanation of them to—to the Judge.

Q. Do you remember whether you said anything to Mr. Kaufman and Judge Davis about your bankruptcy proceedings? A. I don't recall. I may have, I may have done that, but I don't recall the conversation.

Q. I would like to call your attention again, Mr. Fox, to your testimony in the second case, beginning page 550, read- 5301 ing as follows:

> "Q. And what did you tell him, sir?" referring to Mr. Kaufman and Judge Davis? A. Well, I either told him that I had filed a petition in bankruptcy or that I intended to file a petition in bankruptcy, I just can't fix it, whether it was directly before or directly after the time.
>
> "Q. And what happened then, sir? What else did you say to him? A. Why, I told the Judge that the —that this judgment either—that this judgment had

5302 *William Fox—For Amici Curiae—Direct*

come down, that I tried to secure a bond, but I was unable to do it, and that I was obliged to file a petition in bankruptcy, and I inquired as to whether or not he knew the referee in bankruptcy.

"Q. Inquired of whom? A. And he said—of Mr. Kaufman and of the Judge.

"Q. And then what took place? A. Well, they said they didn't know him.

"Q. Was anything else said at that meeting, sir? Would you describe the conversation in full between you, Morgan Kaufman and Judge Davis at that time? 5303 With respect to the referee was anything said? A. I inquired whether they knew the referee.

. . . . . .

A. (Continued) I inquired whether they knew the referee, and they said, no.

"I said that I was very, very anxious that when the—this bankruptcy matter came up, that the referee first try the claims of my creditors, and also try the claims I had against my creditors, for I felt that if that was the procedure that the referee took, the net result would be that instead of being a bankrupt I would be worth several millions of dollars, with 5304 plenty of money to pay all my honest creditors, that there were a lot of manufactured claims that I knew couldn't stand up if they were tried.

"Q. Well, that is what you told Judge Davis—— A. Yes, sir.

"Q. —and Morgan Kaufman? And what was said by them, if anything, at that time? A. They said they didn't know the referee but they would—if they had occasion to learn who he was and met with him they would try to see that the claims would be tried first."

Did you so testify? A. You are reading, as I understand it, from the record——

Q. From the record, yes. A. —of the Court. I may have said that.

Q. Does that refresh your recollection at all as to what conversation took place at that time? A. It does not, it doesn't make it clear to me. However, if that is what I said, that is what I said.

By the Master:

Q. Well, you mean by that, Mr. Fox, that if it is recorded 5306
there, that is what took place, is that what you mean? A. Well, I presume so. If I understand, he is reading from the stenographer's records of the court room.

Q. Yes.

By Mr. Thiess:

Q. Well, is that a true statement of what occurred, Mr. Fox? A. Well, it may have been just that way, it may have been just a little bit different, I don't recall now. I do know, however, that it did me no good, because the referee did the very opposite of that, he never tried the claims, up to this day, and had the referee tried the claims I still contend that 5307
I would have been solvent, and would have had millions to my credit, instead of being a bankrupt.

Q. Well, you do remember, then, that you were contending that the claims should be tried first? A. Oh, I was hoping for that, yes, sir. As I say, that was never done.

Q. And you have no recollection of saying that to—— A. I may have.

Q. —Mr. Kaufman or Judge Davis? A. Well, I don't know about Mr. Kaufman. Mr. Kaufman, I don't think I had much to do with him in this matter, as I was telling this story to the Judge, not to Morgan Kaufman.

Q. Well, Morgan Kaufman was there at the time, was he not? A. Well, whether he listened in on the whole conversation or not, I am not certain of that. As I said a minute ago, the net result was that—that I might just as lief not have said it at all, because the claims were never tried, and I have gone through all the agony, and this conversation meant nothing, and it got me nothing.

Q. Now, do you have any recollection of meeting Morgan S. Kaufman at a later time in Atlantic City, at which you talked to him with respect to Judge Davis—the wedding of Judge Davis's daughter? A. I think I have a recollection
5309 on that, sir.

Q. Well, do you remember when that was, approximately? A. That may have been in July, I am not certain of that.

Q. I think that is correct. Can you tell us what occurred at that time, what was said between you and Mr. Kaufman? A. Well, Mr. Kaufman on that visit explained to me that he was acting as a messenger boy for the Judge, the Judge wanted to borrow fifteen thousand dollars to enable him to give a wedding for his daughter.

By the Master:

5310 Q. Where did that conversation take place, Mr. Fox? A. At Atlantic City, at—I don't recall whether it was at my home or whether it was at a hotel.

Q. Yes.

By Mr. Thiess:

Q. And do you remember what you said to Mr. Kaufman as to whether you would loan this money to Judge Davis? A. I think I said that I would let him know whether I could raise that amount of money to loan to the Judge.

Q. Did Kaufman say anything to you at that time, that he would try to help you in your matter, do you remember?

A. I don't recall that, sir, I don't—probably he didn't, because he—there was no help ever given to me in the bankruptcy matter.

Q. Well, the question isn't whether you got any help, but as to whether you remember that he said that. A. I don't recall, sir.

Q. May I again call your attention to your testimony in the second case record, page 555, which reads as follows:

"Q. On that occasion did you ask Morgan Kaufman to do anything for you?"—referring to this occasion when you met with him and he asked for the 5312
loan for Judge Davis. A. When I suggested to Kaufman that I didn't have the money, he suggested that it would be a good idea for me to borrow it, and that if there was difficulty in—in the bankruptcy court he would try to be—he would try to help me."

Did you so testify? A. Will you read that again, please?

Q. I will read it to you again. A. Yes.

Q. "Q. On that occasion did you ask Morgan Kaufman to do anything for you? A. When I suggested to Kaufman that I didn't have the money, he suggested that it would be a good idea for me to borrow it, and 5313
that if there was difficulty in—in the bankruptcy court he would try to be—he would try to help me."

You can read it yourself if you want to. A. No, I don't doubt that you are reading it correctly——

Q. Oh, I thought possibly you did. A. —and accurately, sir, I don't doubt your word at all on the reading of it, but I don't recall that, sir—but I do know that he never gave me any help.

By the Master:

Q. I infer from what you say, Mr. Fox, that you expected him to help you but he didn't do it, is that about it? A. No, I don't know, I don't know, I don't know what the operation of my—I couldn't say now what the operation of my mind was then, sir.

Q. Yes. A. I don't know just what I had in my mind. I do know the net result was that he did nothing for me.

Q. He did nothing for you, and you don't know whether he tried to do anything for you? A. I do not.

5315

By Mr. Thiess:

Q. Now, following this conversation with Mr. Kaufman in July of 1936 did you thereafter borrow the money? A. I did, sir.

Q. Will you please state whom you borrowed it from? A. I borrowed it——

Q. And how you got the money. A. I borrowed it from Mrs. Fox.

Q. And how did you get the money? A. I got it in cash.

Q. From whom? A. From Mrs. Fox, or my daughter, either one or the other, or both, I am not certain now.

5316 Q. Do you remember that you—you don't remember which daughter you got it from? A. If I got it from one of my daughters it would be my daughter Belle.

Q. And after you received the money from Belle what did you do with it? A. Why, I took it to Philadelphia and gave it to Morgan Kaufman and told him that this was the loan for Judge Davis.

Q. And in what condition was this money? A. How do you mean that, sir?

Q. Was it cash, and what were the denominations of the notes, if you remember? A. It was cash, and I believe it was in fifty and hundred dollar bills, as I remember it now.

By the Master:

Q. You mean thousand dollar bills? A. No.

Mr. Thiess: No, fifty and hundred dollar bills.

The Master: What is that?

Mr. Thiess: Fifty and hundred dollar bills, he said.

Mr. Behrens: Fifty and hundred, not fifteen.

Mr. Thiess: No, fifty and hundred dollar bills.

The Master: I misunderstood. I thought he said fifteen hundred dollar bills.

The Witness: You are ahead of us, now. 5318

The Master: I didn't understand what you said. I thought you said fifteen and one hundred; it just occurred to me if it was fifteen thousand, that wouldn't be it.

By Mr. Thiess:

Q. Do you know where you gave this money to Mr. Kaufman? A. I think it was at his apartment in the Bellevue-Stratford Hotel.

Q. And was there any note given to you for this money? A. No, sir.

Q. Do you remember when you next saw Judge Davis, after you met him on the lawn of your home at Atlantic City? A. It was towards the fall or winter of that year. 5319

Q. And do you remember the occasion of meeting him, where you met him and what occurred, particularly with respect to this fifteen thousand dollar loan? A. I know that I had met with him, and I know that he acknowledged the receipt of the fifteen thousand dollars.

By the Master:

Q. What did he say, Mr. Fox? A. Well, he just thanked me for it and said it served the purpose for which it was in-

5320 *William Fox—For Amici Curiae—Direct*

tended, he had given his daughter this wedding, I think a month or so after the time I had loaned him the money.

By Mr. Thiess:

Q. And do you know where that occurred? Do you know where you met Judge Davis? A. I don't recall now, sir.

Q. Now, do you remember meeting Judge Davis at a subsequent time that year? A. I think I did, yes.

(Interruption.)

By Mr. Thiess:

5321 Q. Before we adjourned, Mr. Fox, you had told about meeting Judge Davis later in the year 1936. Can you state how you happened to meet Judge Davis at that time, what were the circumstances, and how you got together? Do you remember? A. I think the Judge had telephoned to my home and asked to see me.

Q. See you where, in Philadelphia? A. We had made an appointment somewhere in Philadelphia, yes, sir.

Q. Did you meet him in Philadelphia? A. Yes.

Q. Do you know where you met him? A. It was either at the Adelphia or the Benjamin Franklin Hotel, I am not certain which.

Q. And when you met Judge Davis at either one of these
5322 hotels what was the substance of the conversation between you and Judge Davis? A. Why, he said that his daughter had married and that he had saved her lifelong savings and he didn't have it to repay to her, and could I see my way clear to loan him another twelve thousand, five hundred dollars.

Q. Was anything said at that this meeting about the repayment of the fifteen thousand dollars which you had previously loaned to Judge Davis? A. The best of my recollection was that he said he would pay it back at some future time.

Q. And what did you say to Judge Davis respecting the contemplated loan of twelve thousand, five hundred, at the meeting in Philadelphia? A. Why, I don't recall now whether I said that I would loan it to him, or whether I wanted time to consider it, or what—that isn't clear in my mind. I know subsequently I did loan him the twelve thousand, five hundred dollars.

Q. And how did you obtain this twelve thousand, five hundred dollars? A. I borrowed it from Mrs. Fox.

Q. And who gave it to you? A. Either Mrs. Fox or my daughter, Belle, or both, I don't remember which.

Q. And—— A. I think it was my daughter Belle. 5324

Q. And do you remember the character of the bills which you received—— A. Yes.

Q. —from your daughter? A. They were twelve $1000 bills, $1000 bills, and I don't remember how the other five hundred was, whether it was in one or more bills.

Q. Now, what happened after you borrowed this twelve thousand, five hundred from Mrs. Fox and received the money from either her or Belle Fox? A. I met the Judge and loaned it to him.

Q. And where did you meet the Judge? A. I met—I met with him by appointment.

Q. Where, in Philadelphia, or in—— A. In Philadelphia, yes. 5325

Q. And where did you meet with the Judge to give him this twelve thousand, five hundred? A. Now, you don't want the word "give" in there, do you? You want the word "loan"——

Q. Well,—— A. —in there, because——

Q. —either way—loan him this Twelve thousand—— A. That is right; I had met him at one of the streets, at either Chestnut or Walnut, and Twelfth, I believe, I am not certain of the street, I had the money with me at the time and I gave it to him.

money wrapped up when you gave it to him?
pped in newspaper, yes, sir.
his meeting did you say anything to Judge
hing more than, I had complied with his re-
ing him twelve thousand, five hundred dol-
he thanked me, and hoped he would be able
.

gave it to him in this newspaper? A. Yes,

you remember that at the time you loaned
is twelve thousand, five hundred whether or
mily, or your wife's interests had any litiga-
Court of Appeals of the Third Circuit? A.
hat, sir.
remember any litigation in which Mrs. Fox
A. I don't recall it, it may have been, but

remember, do you have any recollection of
s and that she was involved in litigation
ss? A. I have strong recollection of that,

you remember, could you state what that
was going through the period of change of

ou remember any litigation which involved
ers? A. Well, she was asked to testify in
court and couldn't do it.
ou remember whether any litigation involv-
ng was before the Court of Appeals of the
t that time? A. Well, my recollection is
and my recollection was the Third Circuit
octor from the Jefferson Hospital here, who
y on the thing that was ailing Mrs. Fox,
nge of life, and that he visited her home,
ere, and made a thorough examination of
itten a report and had testified in the court

] that that woman should not be allowed to give any
ny for the present.
Was that prior to the time or subsequent to the time
r loaned the twelve thousand? A. I don't recall, sir,
r that was before or after. I think the gentleman
me was a dean of the Jefferson College here, Medical

When in 1936, to the best of your present recollection,
hand Judge Davis—did you loan Judge Davis this
thousand, five hundred dollars? A. I don't—I don't
er the exact time, but it was towards the end of the
It may have been October, November or December, I 5330
now the exact time, sir.
And according to your present recollection you do
ow whether there was any litigation pending before
ird Circuit Court of Appeals in which your wife
A. I don't.
—you were interested? A. I don't recall, sir.
Now, do you remember the next time you met Judge
after you had loaned him this twelve thousand, five
d dollars? A. No. Would you refresh my recollec-
that, please?
Possibly I can; it was either—in 1937, the first part
do you remember seeing Judge Davis about your 5331
illness? A. I don't recall, sir.

Mr. Thiess: We better get this testimony and see whether we can refresh his recollection.

Thiess:

I am going to read to you from the second criminal cord, page 563:

"Q. When was the next time that you saw Judge Davis, if ever? A. Some time in 1937.

"Q. And what took place at that time, sir?

. . . . . .

5332 "Q. Can you fix the time by any incident more definitely, please, than just 1937? A. It may have been April, May or it may have been June, I am not sure.

. . . . . .

"Q. I can't hear you, either, here, Mr. Fox. Will you try to keep your voice up, sir? A. Yes, sir. I say it was in the spring, I believe in the spring of 1937. At any rate, it was at a time when Mrs. Fox was found guilty of contempt of Court for not answering questions that were asked of her, and I had gone to Judge
5333 Davis and told him that Mrs. Fox was going into the period of the change of life, that she tried to testify in the Referee's Court, and she fainted and passed away, and we were obliged to take her home. The doctors examined her and told us if she continued to be made to answer, she might die in the examination. I told that to Judge Davis, and I asked him to be kind enough to give this woman every consideration.

"Q. What did he say to you? A. He said he would give her every consideration.

"Q. Was anything else said? A. No, sir."

Does that refresh your recollection? A. That does. That is
5334 correct.

Q. And you so testified. Now, did you have any contact and conversation with Morgan S. Kaufman during the period of 1936 and '7? Did you talk to him, contact him and advise him at all about your difficulties in your bankruptcy proceedings? A. I don't recall sir.

Q. Do you remember meeting him during that period? A. I may have.

Q. But you don't remember talking to him, what you may have talked to him about? A. That is right.

By the Master:

Q. Did he represent you in your bankruptcy proceeding? A. He did not, sir.

Q. Did not? A. He did not.

Q. Only in the Tri-Ergon case? A. That one case back in 1932 or 33.

By Mr. Thiess:

Q. And he also represented you as an agent, or somebody in your family as an agent, trying to sell the Tri-Ergon patents, that is correct? A. That function he performed during the years of '33 and '34 or '35, after the Court had passed on the patents.

Q. Now, I would like to direct your attention to the testi- 5336
mony in the second criminal trial record, page 564:

"Q. Did you have any conversations with Morgan Kaufman throughout the period that you have been talking about, sir, in '36 and '37? A. Well, as I said at the very beginning, I was very well acquainted with Mr. Kaufman. We were social friends for a number of years, and, of course, I kept him informed of the progress that I was making in the bankruptcy court.

"Q. The progress in the bankruptcy court? A. Yes, sir."

5337

Do you remember so testifying? A. Well, I may have said that.

Q. Does this refresh your recollection at all? A. It does not.

Q. You have no recollection at the present time of talking to Mr. Kaufman during 1936 or '7? A. I think by this time I learned that there was no—I would be wasting my time to talk to anybody about the matter.

Q. Well, these cases were still pending at that time, were they not? A. I don't recall, sir.

Q. Well, I merely mention that because you said you would be wasting your time. A. I stopped talking, because there was no use, it seemed to me I couldn't get any help of any kind, the Referee just was going along in his own way, wouldn't listen to the claims, and he wouldn't find out whether I was or was not a bankrupt.

Q. Do you remember that your lawyers appealed from those orders of the Referee and they all went to the Court of Appeals of the Third Circuit? A. If they were appealed I presume that is where they would have to go.

Q. And you know they were considered by the Court of
5339 Appeals of the Third Circuit? A. I presume so, sir.

Q. Now, do you remember again meeting Judge Davis sometime in about the middle of 1940, in New York? A. I think I did, yes, sir.

Q. Can you fix that date in 1940, about what season of the year? A. I couldn't do that, sir.

Q. I wish again to call your attention to the testimony in the second criminal case record, page 565:

> "Q. Mr. Fox, when was the next time after 1937 that you had occasion to meet with Judge Davis, if ever? A. I believe it was in July, 1940."

5340 Do you remember so testifying? A. I do not.

Q. And does that refresh your recollection at all as to the date? A. It doesn't. You have never been in jail, have you?

Q. No, I never have. A. This is my first trip, and I have been in a room there for two days and two nights, and I know my name is William Fox, I still know I am married and have children and grandchildren, but that is about the limit of my recollection now.

Q. Well, do you remember meeting Judge Davis at the Pennsylvania Hotel, in New York? A. Yes, I have a recollection of that, yes.

Q. And do you have any recollection how that meeting was arranged? A. No, I haven't.

Q. Do you remember anything about—you know Mr. Becker? A. Yes, sir.

Q. Do you remember at all Mr. Becker talking to you about seeing Judge Davis? A. I don't recall how that—I don't recall now how that arrangement was made.

Q. Well, you do remember meeting Judge Davis at the Pennsylvania Hotel, do you? A. I know I met him there, yes, sir.

Q. And do you remember what occurred at that meeting? A. I do not, sir. 5342

Q. Do you remember Judge Davis at any time talking to you about the thousand dollar bills that he obtained from you? A. You mean the ones I loaned him?

Q. Yes. Maybe I can—do you have any recollection of that? A. I think I have—I think I have a recollection. I am trying to get the continuity of it.

Q. All right. A. When he originally asked for this second loan he said that it was for the purpose of returning moneys that he owed his daughter. When we met in 1940 he told me he had returned that money to her and that the bills—that five of those bills that he had given her had been traced into a bank account somewhere in Florida, that the authorities had the numbers of those bills, and I think he 5343 inquired where I got the money from. I told him where I got it from.

Q. Did you tell him what bank it was obtained from? A. No, I don't know whether I told him the bank.

Q. Did Judge Davis say anything about whether you know whether the bank where these thousand dollar bills were obtained kept track of the numbers of the bills? Do you remember anything about that? A. He might have said that, but I don't recall, sir.

Q. I would just like to read to you your testimony in the second criminal case record, page 572, as follows:

"Q. Where was the meeting? A. At the Pennsylvania Hotel in New York City.'

"Q. Was anybody else present at the meeting? A. No, sir; just Mr. Davis and myself.

"Q. And what took place at that meeting, sir? A. The Judge had informed me that he had just been advised that the five one-thousand-dollar bills that his daughter had deposited in Florida some time in 1937—that the Florida bank had taken the numbers—that he was anxious to find out where I had gotten this money that I had loaned him. I told him Mrs.
5345 Fox got it from a bank in Atlantic City, and he suggested that I try to find out whether they kept the numbers, and said that if—if by chance—these numbers are identical we were both in very serious trouble."

Did you so testify? A. I don't recall. That is probably—my recollection then was probably better than it is now.

Q. And you believe that is true, that is, the testimony as there stated? A. Yes.

Q. Now, do you remember again meeting Judge Davis in New York City in 1940? A. I may have.

5346 Q. Have you any recollection, do you have any recollection of a meeting with Judge Davis at which he talked to you about a man by the name of Lewis, a junk dealer? A. Yes.

Q. Do you remember—have you any recollection as to about when that occurred? Did that occur in 1940? A. I don't recall exactly when that occurred.

Q. Well, will you state as best you remember now the substance of the conversation between you and Judge Davis at this meeting? A. Well, now, you have it there, and, as I say, my recollection then surely is better than it is now.

Q. Well, have you any recollection now? A. Well, I recall some conversation but I wouldn't dare to repeat it again, as long as I have it, as stated before. Supposing you read it to me.

The Master: Suppose you read it to him and let him say if it refreshes his recollection.

Mr. Thiess: Very well.

By Mr. Thiess:

Q. Now, I am reading from the record, second criminal case record, page 573: 5348

"Q. Did you meet him again, sir?"—referring to Judge Davis. A. Yes, sir.

"Q. In the year 1940? A. Yes, sir.

"Q. When and where, sir? A. At the Pennsylvania Hotel, either the latter part of August or the early part of September.

"Q. And what happened then, sir?"

A. I think—I think my mind is clear on it now, sir, if you wish me to go on from there.

Q. All right. A. My recollection is that he had—that he was alarmed about the whole thing. I saw no basis of 5349
being alarmed at all, I loaned this money to him in good faith and saw no reason why there should be any disturbance about it, and he said there was a disturbance about it and that he would prefer that I—he inquired whether I knew a man in the second-hand tire business, I think, somewhere in Trenton, I am not certain, now.

Q. By the name of Lewis? A. By the name of Lewis, and whether—and did I know Mr. Lewis, and I told him I did not.

He told me this Mr. Lewis was dead and that his son was alive, and that perhaps I could remember paying this

5350 money to Mr. Lewis for a loan that Lewis had made to me; then in that way he could have received the five thousand from Lewis, because Lewis owed him money, and I think I took the position the thing was too complicated, too confusing and not the facts, and that I would prefer not to have anything to do with that kind of an arrangement.

Q. Now, have you any recollection of again meeting Judge Davis, in Murry Becker's apartment? Now,— A. I never met Judge Davis in Murry Becker's apartment.

Q. Well, do you know when you next met Judge Davis after this meeting in 1941? A. I think that was our last
5351 meeting. I am not certain of that, either.

Q. Do you remember meeting him on St. Patrick's Day in 1941? A. Wasn't that meeting I described——

Q. No. A. —on St. Patrick's Day?

Q. This was another meeting. Maybe I can refresh your recollection by reading—— A. Yes, sir.

Q. —the testimony in the second criminal trial record, page 575; referring to Judge Davis:

"Q. And when was the next time, if ever, that you saw Judge Davis? A. On the 17th of March, 1941.

"Q. Was anybody else present at that meeting?
5352 A. No, sir.

"Q. Who arranged that meeting, if anyone—or—I withdraw that question.

"How did that meeting come about?

* * * * * * * * *

"Q. Mr. Fox, you say you met Judge Davis on March 17, 1941, I next ask you the question. How were the arrangements made to meet him on that day? A. I was at the—I was at the home of my attorney, Mr. Murry C. Becker on the evening before—Sunday evening—and while there Mr. Morgan Kaufman came in, and during his visit he told me that Judge Davis would be in town on Monday and that he was

very anxious to see me. I understood him to say that I should secure a room at the Pennsylvania Hotel under the name of Herman Goldberg.

"Q. What did you then do, sir, about securing that room? A. I had asked someone to do it for me, and was advised that there was a convention at the Pennsylvania Hotel——"

Do you remember so testifying? A. You have it there.

Q. And does that refresh your recollection? A. It does not, just now.

5354

Q. All right, I would like to read a little further, on page 577:

"Q. Was any room secured at the Pennsylvania Hotel, sir? A. No; there was a convention held there.

"Q. Was any room secured in any other hotel, sir? A. Yes, sir.

"Q. By the person whom you instructed; is that right, sir? A. Yes, sir.

"Q. Did you and Judge Davis occupy that room? A. No, sir.

"Q. What room did you occupy? A. The one that Judge Davis had secured at the Governor Clinton Hotel.

5355

"Q. How did you receive the information to go to the room that Judge Davis had secured."

That was excluded.

"Q. What room did you go to? A. Room 1149 and 50.

"Q. What hotel? A. Governor Clinton Hotel."

Now, do you remember, did you so testify? A. I guess I did.

Q. And do you remember going to the Governor Clinton Hotel? A. Yes, I remember going to the Governor Clinton Hotel.

Q. And does this testimony that I have just read you refresh your recollection that those events did occur as you there testified? A. Well, not quite as you describe it there. I know I—my recollection now is that someone had telephoned to my office asking me to go to Judge Davis, to a room, 1149, 1150, at the Governor Clinton Hotel.

Q. And you went there? A. And I went there.

5357 Q. Do you know who telephoned? A. I was never able to find out who telephoned, no, sir.

Q. Do you know, did you arrange to have a room at the Governor Clinton Hotel? A. No, I think the Judge arranged that.

Q. Did you also arrange for a room there? A. No, I—we occupied the room that he had arranged. I don't recall whether I had arranged for one or not.

Q. Well, did you meet Judge Davis in his room which was reserved for him in the name of Herman Goldberg? A. I met Judge Davis in a room that he had reserved, yes, sir.

Q. And how did you receive the information to go to the room of Judge Davis? A. As I say, someone had telephoned to my office and asked me to go there.

5358 Q. Now, what occurred when you met Judge Davis in this room? A. I don't recall, sir. I wish you would refresh my recollection on that.

Q. All right, I am reading from the record, page 580:

"Q. And what took place at that meeting, Mr. Fox? A. I told Judge Davis that I had been sent for by the United States attorney in New York——

"Q. Yes, sir. A. —and that I was questioned whether I had any relationship with Judge Davis, and my answer to that—to those questions—was no; and during that conference both he and I agreed

that we would take the position that we did not know each other, or never met each other.

"Q. At that time was there anything said with respect to an investigation in Philadelphia?

* * * * * * * * * *

"The Witness: Yes, we knew there was to be an investigation."

Do you remember so testifying? A. I don't recall it, sir.

Q. Does that refresh your recollection? A. If it is there, I must have said that.

5360

By the Master:

Q. Well, is that what happened, Mr. Fox? A. Well, I really don't—I couldn't bring my mind back to it. I am trying awfully hard——

Q. Yes, I know you are. A. —to tell you the circumstances.

Q. You have been under a great strain. A. Yes.

Q. All we ask of you is your best recollection, that is all, Mr. Fox. A. Yes, and my recollection on it isn't—I wouldn't depend on my recollection today at all on that matter, I would rather say that if it is there it is there, although I don't recall it just now.

5361

Q. Well, if it is there you think it must be correct, is that what you mean? A. I should say "yes" to that.

Q. Yes.

By Mr. Thiess:

Q. Now, Mr. Fox, did you ever ask Judge Davis to repay any part of the twenty-seven thousand five hundred dollars that you loaned him? A. I may have.

Q. Do you remember that you did or did not? A. Well, I say, I can't—I wouldn't want to bank on my recollection of today. It is perfectly possible that I did.

uriae—Direct

or other obligation——

sir.

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your testimony or looked
these cases subsequent
No, I have not.
have never talked to me
? A. I don't know your

A. Thiess?
to anybody at all about
particular proceeding?

ke just one statement on
lemen take me over?
r. Fox.
have got to say this in
an. I think he has been
hing, and as I look back
way from the excitement
dy to serve my term, I
been done him in this
l as a mere office boy to
he Judge the first time,
n a thing in my life in

the record, sir, that I
nor talked to Mr. Kauf-
s began up to the present

time. It is my conscience that is now talking, rather than anything else.

If you would like me to step out, gentlemen, I would be glad to.

Mr. O'Mara: No.

Cross Examination by Mr. O'Mara:

Q. Mr. Fox, you testified before the Grand Jury in New York sometime in 1940, is that so? A. Yes, sir.

Q. And you were questioned, were you not, about your dealings with and transactions with Morgan Kaufman? A. Yes, sir. 5366

Q. Did you testify to this fifteen thousand dollars which you just testified to, that you gave to Mr. Kaufman to deliver to Judge Davis as a loan? A. I did not.

Q. Subsequent to your testimony before the Grand Jury you were questioned by assistant United States Attorneys in New York City on several occasions, were you not? A. Yes, sir.

Q. Can you recall when those interviews took place? A. I cannot.

Q. Were they some time shortly before the indictments were handed down? A. They must have been before that.

Q. Would you say they were about the 13th or 14th of March, 1941? A. I wouldn't be able to give you the date of it, but it was—— 5367

Q. Is that approximately the right time? A. Well, I really don't know, sir.

Q. All right. Now, who were present at these interviews—there were two of them, as I understand, in March of 1941—do you remember? A. I think Walter Gahagan and a man by the name of Fulton.

Q. Both Assistant United States Attorneys? A. Yes.

Q. Did you have two interviews with those gentlemen on the same day, one in the morning and one in the afternoon? A. I think so.

Q. On either one of those occasions did either Mr. Fulton or Mr. Gahagan question you as to whether or not you had ever given Morgan Kaufman any money to deliver to Judge Davis? A. No, they did not.

Q. Are you sure? Didn't you tell them on that occasion that you had not given money to Mr. Kaufman to give to Judge Davis? A. I don't recall, I don't recall that examination at all. At neither one of those examinations was there any—at neither one of those examinations was there any stenographic records taken. I don't recall that.

5369 Q. Mr. Fox, I call your attention to the record of the second criminal trial, page 925, in which this question was asked, referring to the interview to which I have just alluded:

"Q. And who examined you? A. Either Mr. Fulton or Mr. Gahagan.

"Q. Were both interviews on the same day? A. Yes, sir.

"Q. When was the first one in the morning? A. Yes, sir.

"Q. And what was the subject matter of the inquiry? A. As to whether I had ever given any money

5370 —loaned any money or given any money to Judge Davis or Mr. Kaufman.

"Q. You were asked a direct question whether you had given any money to Mr. Kaufman or Judge Davis, were you? A. Yes, sir.

"Q. And you were asked the direct question as to whether you had given Judge Davis any money, weren't you? A. Yes, sir.

"Q. And what was your answer to each of those questions? A. I said no."

Now, does that refresh your recollection, Mr. Fox? A. I said no.

Q. You did say no to them in answer to the question——
A. Yes, sir.

Q. —as to whether you had ever given Kaufman or Davis any money or loaned money? Was this the interview at which either Mr. Fulton or Mr. Gahagan told you that you ought to consult counsel? A. That is right.

Q. And did you consult counsel—— A. I did.

Q. —as a result of the suggestion of either Mr. Fulton or Mr. Gahagan? A. I did.

Q. And what counsel, may I ask? A. Mr. Martin W. Littleton.

5372

Q. At this time, besides the subject matter of the inquiry then under consideration, the Government had substantial income tax claims against you, did they not? A. Yes, sir.

Q. They amounted to something in the neighborhood of four or five millions of dollars, did they not? A. Well, they amounted to that much, but they had offered to make a settlement of it some years before, for two hundred and twenty some odd thousand dollars, and I was advised not to pay it, because I didn't owe it.

Q. But the claim which they had then was something in the neighborhood of four or five million dollars? A. Yes.

Q. Had you at that time received a discharge in bankruptcy? A. No, sir.

5373

Q. Had you made an application for a discharge in bankruptcy? A. We made an application five years before that.

Q. Had the Government filed an objection to your discharge in bankruptcy? A. I really don't know, sir.

Q. Don't you know that the Government had filed an objection? A. I really don't know.

Q. Don't you recall that the Government objected to the discharge in bankruptcy on the ground that some of the claims for income tax which they had filed they claimed were a result of fraud on your part? A. Well, I wouldn't

be a bit surprised that they joined in the objection to the discharge. There were others that made the same objection, of course.

Q. Yes. Now, how long did these interviews with Mr. Fulton and Mr. Gahagan last? A. Not very long, say fifteen or twenty minutes each.

Q. Was there either at those interviews or any other interviews ever raised the question of a possible indictment of you for income tax evasion? A. No, sir.

Q. Was ever any question raised of a possible indictment of Mrs. Fox or your daughter? A. No, sir.

5375 Q. Was ever any question raised of the compromise of any tax claims that the Government had against you—— A. No, sir.

Q. —during these interviews with the United States Attorneys? A. No, sir.

Q. After you left the office of the United States Attorney did you go directly to the office of Mr. Littleton? A. Well, I have seen Mr. Littleton after that, I don't know whether it was directly or whether it was an hour or two, or——

Q. The same day, was it? A. It might have been the same day, I am not certain of that.

Q. And did you discuss your matter, your troubles, with Mr. Littleton? A. Yes, sir.

5376 Q. Did you instruct Mr. Littleton to do anything with relation to seeing the United States Attorneys? A. Well, I didn't have to instruct him, he advised that that be done.

Q. Did you authorize him to do it? A. Well, I had no objection to it.

Q. Well, you knew he was going to do it? A. Oh, yes, I knew he was going.

Q. And he did it with your consent and with your authority, is that right? A. Well, he did whatever he thought was best for me. He didn't need any further consents than that. I engaged him as my attorney.

Q. Do you know when he saw the United States Attorney? A. I do not, sir.

Q. Do you know whether it was the next day or not? A. I do not, sir.

Q. Do you know how frequently he saw the United States Attorney between the time you retained him and the time when you went to the United States Attorney's office in his company? A. I think several times.

Q. Well, what do you mean by several, Mr. Fox, three or four times? A. Well, at least three times. It may have been more.

5378

Q. And did you know what the subject of his discussion with the United States Attorneys was on those three or four occasions? A. Yes, sir, I did.

Q. Will you tell us, please, what it was? A. Why, he was inquiring from them as to what consideration I would receive if I became a Government witness in the matter.

Q. Yes. A. And he was told that—as he reported to me—that consideration would be recommended to the Court—consideration for me.

Q. Consideration of what kind, Mr. Fox, did he tell you? A. Well, I presume he meant—I presume he meant in the form of the sentence that I would receive.

Q. Well, did the discussion go further than what consideration you would receive if you became a Government witness? Did it also entail what consideration you would receive if you pleaded guilty to an indictment? A. Well, that was the basis of the consideration as it was reported to me.

5379

Q. That is, the plea of guilty and becoming a Government witness, is that right? A. They would recommend to the Court that I receive consideration, and that, of course, wasn't quite clear to me. I then asked Mr. Lit[illegible]ton what would happen in my matter if these two men were not convicted, and, of course, his reply was that he did not discuss

that at all, the Attorney General's office was pretty certain of a conviction here, and I said, "Well, I want you to go back and find out exactly what is going to happen to me if these two men are not convicted", and he brought back an assurance to me from Mr. Fulton and from Mr. Gahagan that if these two men were not convicted that I would be given the right to withdraw my plea of guilty and stand trial.

Q. Now, did Mr. Littleton report to you whether or not Mr. Fulton or Mr. Gahagan made any such arrangement with him on their own responsibility or whether or not they consulted somebody in Washington before they entered into
5381 that arrangement? A. I think they consulted someone in Washington before they did.

Q. How much delay was there in coming to this arrangement, if you know? A. Oh, I think the same day or the next day.

Q. Did Mr. Fulton or Mr. Gahagan go to Washington, to your knowledge? A. I do not know that, sir.

Q. Might have telephoned, you think? A. I do not know how it was done.

Q. Yes. A. I do know that since then Mr. Fulton had written a letter to Mr. Littleton in which he states that that was the arrangement that was made me, that if these
5382 two men were not convicted I would have the right to withdraw my plea.

Q. As a matter of fact, you made application to withdraw your plea of guilty, did you not, Mr. Fox? A. I made several applications—or, not several, but two applications to withdraw that.

Q. And those applications were denied? A. The Court ignored the arrangement that I had with the United States Government.

Q. I see, but you did receive a less than maximum sentence in accordance with the arrangements which were made

with the United States Attorney, did you not, Mr. Fox? A. No, there was no arrangement made, there was just a question of asking the Court to give me consideration. I guess the Court felt it gave me its consideration.

Q. Well, the consideration was that you received a sentence of a year and a day? A. He could have made it a day, just as well. It depended upon what he was willing to do.

Q. Yes, but he did make it a year and a day, did he not? A. He made it a year and a day, yes.

Q. And after—— A. In violation of my agreement with 5384
the United States Government, which we now have in writing, although it doesn't do me any good to have it.

Q. After this arrangement was made by Mr. Littleton with the United States Attorneys you then went to the United States Attorney's office and made a statement, did you not? A. Made a statement and signed it, sir.

Q. And you made that on the 22nd of March? A. On a Saturday, on a Saturday morning, whatever date that fell on.

Q. Saturday, March 22, 1941, is that about right? A. I don't know if it was the 22nd. I know it was a Saturday morning in March. 5385

Q. Well, that was after the arrangements had been made between Mr. Littleton and the Assistant United States Attorneys, is that right? A. Yes, sir.

Q. And it was at that statement which you made on the following Saturday——

Mr. O'Mara: And I think you will agree it was March 22nd, Mr. Thiess, 1941.

By Mr. O'Mara:

Q. —that you for the first time made this statement which involved Mr. Kaufman as the go-between in this fif-

teen thousand dollar transaction, was it not? A. I didn't —I didn't say he was a go-between at all, I simply said he was a messenger.

Q. Well,—— A. I didn't charge him with being the go-between at all.

Q. Well, call him what you may, on March 22nd, 1941, after this arrangement had been made between Mr. Littleton and the United States Attorneys, you for the first time made a statement which involved Mr. Kaufman in the transaction in any way, is that so? A. That is right—which involved Mr. Kaufman to the extent that he came to me and asked
5387 me—said that the Judge had sent him to me to borrow—to loan the Judge fifteen thousand dollars.

Q. Yes. A. Period—that is all I had anything—that is all the things I had to do with Kaufman.

By the Master:

Q. Was that also the first time you had involved Judge Davis? A. That is right.

By Mr. O'Mara:

Q. The claims that were filed by the United States for
5388 income tax in the bankruptcy proceedings have as a matter of fact been settled, now, have they not, Mr. Fox? A. Yes, sir.

Q. And for how much? A. How much did the United States Government get out of it?

Q. Yes. A. I think they got two hundred and ninety-five thousand dollars.

Q. And you have now received a discharge in bankruptcy? A. Yes, sir.

Q. And the United States has withdrawn its objections to your discharge, presumably? A. Yes, sir.

Q. And, Mr. Fox,—— A. Well, I am not going to thank them for that,——

Q. All right. A. —because, remember, I said at the very beginning, some years ago they were willing to take two hundred and twenty thousand and I was ready to pay it, and I had a damned fool accountant who told me I didn't owe it, not to pay it, as a result of which I didn't pay it.

Q. Yes. A. And finally they did take two hundred and ninety-five thousand, for a claim of some five million.

(Discussion off the record.)

The Witness: Well, I would like to say a thing more in that, sir, because I don't want you to make the inferences that you are making, because they are 5390
unfair. For example, sir, let me——

Mr. O'Mara: You don't know what inferences I am making, Mr. Fox.

The Witness: Well, I don't know, but I am trying to read your thoughts.

The Master: Let the witness explain.

Mr. O'Mara: Yes, certainly, I want him to explain.

The Witness: The United States Government, as you know, is a prime creditor,——

Mr. O'Mara: Yes,

The Witness: —and Mrs. Fox had paid nine hundred, or eight hundred and ninety-five thousand dollars, I think it was, in the settlement of this bankruptcy for me. The United States Government, if it 5391
felt I owed them eight hundred and ninety-five thousand could have taken it all, didn't have to leave any of it for the remaining creditors, but it did agree to take two hundred and ninety-five thousand, which in my opinion was far in excess of what I owed them. This is just clearing my own conscience, sir.

Mr. Thiess: All right.

The Witness: Not that it makes any difference here, I know.

5392 *William Fox—For Amici Curiae—Cross*

Mr. Thiess: Anything you have got to say, Mr. Fox, is O. K.

(Discussion off the record.)

The Master: You might put that on the record.

The Witness: The inference that I objected to is that it would appear from the questioning that the United States Government had given me, as a—as a prize for testifying in the Kaufman-Davis case, the settlement of my income tax. One had nothing to do with another. In my opinion the Government got all
5393 that it was entitled to, and was willing to take less some years ago than the amount they actually got, and was a prime creditor in the bankruptcy court and could have taken the whole eight hundred and ninety-five thousand dollars if it so wished to do, but it knew I didn't owe it, so it took an approximate amount, what they thought I did owe.

By Mr. O'Mara:

Q. Your position is, as I take it, Mr. Fox, that the only prize you got for testifying in the case was the agreement of the United States Attorneys to recommend leniency in
5394 the matter of sentence and to permit you to withdraw your plea of guilty in the event that Judge Davis and Mr. Kaufman were not convicted? A. I contended that the United States Government did not carry out its contract with me. It made a definite promise that I would have the right to withdraw my plea if these two men were not convicted, and that I should have the right to withdraw my plea now, and that I should not have been sentenced at all.

Q. My question was, however, Mr. Fox, that those were the only inducements—if I can call them such—that were held out to you prior to your entry of a plea of guilty; I mean, income tax had nothing to do with it, the only thing,

the only inducement that was held out to you by the Government was the undertaking to recommend clemency or consideration in the matter of sentence, and the arrangement—— A. Period, period.

Q. Wait a minute,—— A. That is all. Now, it is after that that I sent Mr. Littleton back——

Q. Right. A. —and said, "What will happen to William Fox if these two men are not convicted?"

Q. Yes. A. And the Government said, "In such an event we will allow this man to withdraw his plea."

Q. But at the time that you agreed to plead, and made this statement, you had received from the Government an assurance that clemency would be recommended, or consideration recommended in the matter of sentence, and that in the event of a failure to convict Judge Davis and Mr. Kaufman, you would be permitted to withdraw your plea? A. That is right. That we had—that we had—that we had purely verbally. 5396

Q. I understand, sir. A. And since then we have a letter from Mr. Fulton in which he states the Government's understanding, that I would have the right to withdraw my plea if these men were not convicted, and that the Government failed to carry out.

By the Master: 5397

Q. Well, Mr. Fox, the thing we are interested in here is—— A. Not this at all, I know.

Q. —not that, but whether after you had consulted with Mr. Littleton and made that subsequent statement you have told us about, on the 22nd of March, I think you said it was, whether that statement was true or whether what you had previously said to the District Attorney was true. A. Well, of course, what I said in my statement was true. I did loan Judge Davis twenty-seven thousand, five hundred dollars, and the Government knows that it found five one-thousand

dollar bills, these very one-thousand-dollar bills that I gave Judge Davis, in his daughter's bank account somewhere in Florida. That is probably the only corroboration that the Government had that I had made these loans.

The Master: Anything further?

Mr. Thiess: I have nothing further.

Mr. O'Mara: I have no further questions.

The Witness: Back to jail, then. I wish you had gone on until about nine o'clock at night, and the jail would have been locked.

5399 *By the Master:*

Q. Just one thing I did want to ask you, the Tri-Ergon case that you had, was that a patent case? A. Yes, sir.

Q. Was that in the Middle District of Pennsylvania? A. Yes, sir.

Q. You retained Mr. Kaufman because you knew him, and he was up there in that District? A. Well, now, our patent lawyers said that they would have to have a correspondent in Scranton, and Mr. Kaufman was then a practicing lawyer in the City of Scranton, Pennsylvania. We either had to hire him or somebody else; didn't make any

5400 difference to me who was hired.

Q. You never actually retained him in your bankruptcy proceedings at all? A. Never retained him again but in that one case, he never received any pay from me in any shape, manner or form, and I vouch for Mr. Kaufman for being a fine, decent gentleman.

Q. You did pay him a fee in the Tri-Ergon case, didn't you? A. That was cleaned out and closed out when the Supreme Court spoke some time in 1935.

Q. But not in any other matter? A. Not in any other matters.

Redirect Examination by Mr. Thiess:

Q. Well, let me ask you this question, Mr. Fox. You knew Mr. Kaufman—— A. Yes.

Q. —before he was retained as your counsel in the Tri-Ergon case? A. Oh, yes.

Q. And was it at your instigation, through Becker's firm, that he was retained as local counsel? A. Well, you asked me that before, and I really don't know how that came about.

Q. All right. A. But, nevertheless, the name of Kaufman would have been satisfactory to me, for I knew him before, before we came. 5402

Mr. Thiess: All right, that is all I have got.

The Master: Well, that is all, I think, Mr. Fox.

The Witness: All right, thank you.

The Master: Thank you very much.

Mr. O'Mara: Thank you, sir.

The Witness: All right.

The Master: Well, now, to continue with what I was saying before we began the examination of Mr. Fox, I received and have here Judge Thompson's conference memoranda in three cases which were cited or which were argued in January, I think it was, 1935. 5403

Mr. Neuman: They are the three cases after the Root.

The Master: That is right, Evans v. Shalleross, Rietzsch v. Paradis and others, and Pennsylvania Railroad and Merchants Warehouse Company v. Terminal Warehouse Company—that happens to be a case I was in—and I have his docket.

Do you gentlemen want to look at it?

Mr. Thiess: We would like to look at it.

The Master: I don't know whether it has any particular significance.

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Transcript of Hearings, November 24, 1942 5407

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Tuesday, November 24, 1942, at 10:00 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois). 5408

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Illinois).

Amici Curiae.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.).

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey).

JOHN R. MCCULLOUGH, Esq. (100 Broadway, New York, N. Y.), representing Universal Oil Products Company.

Evidence on Behalf of Amici Curiae (Continued)

5409

JOSEPH BUFFINGTON, was examined and testified as follows:

The Master: Mr. Thiess, you may examine Judge Buffington.

Direct Examination by Mr. Thiess:

Q. Judge Buffington, you were a member of the Court of Appeals of the Third Circuit for quite a period, were you not? A. Yes.

5410 *Joseph Buffington—For Amici Curiae—Direct*

Q. Do you remember how long you were a member of that Court? A. Well, yes, I think I was appointed Circuit Judge in 1906, but before that time I was constantly sitting in the Circuit Court of Appeals, because we only had two active Circuit Judges, and Judge Gray called me in very frequently from the time of the beginning of the Federal Court of Appeals.

Q. And do you remember that you retired about June the first, 1938? A. I don't remember the date, but I remember the fact?

Q. Now, do you remember, Judge, the practice that the
5411 Court of Appeals of the Third Circuit had in connection with cases that came before that Court?

Mr. Harris: In 1935?

By Mr. Thiess:

Q. In 1935, '36 and '37. A. What is that? I can't hear you, I am sorry.

Q. We will see whether we can't do a little better: Do you remember the practice in the Court of Appeals with respect to cases that came before that Court—— A. Oh.

Q. —after they had been argued, how you handled those cases? A. Oh, yes.

5412 Q. Could you give us that practice? A. Yes.

Q. How you handled those cases? A. Yes.

Mr. Harris: Limited to the certain years.

Mr. Thiess: During the period, sir, 19——

The Witness: No, no, I mean, to give the practice in what respect?

By Mr. Thiess:

Q. Well, for instance, after the argument what was the practice of the Court with respect to cases, how did you handle them—— A. Oh.

Q. —up to the time that the cases were decided? A. Well, it depended on each individual case. In some cases the Court heard, when we would stop for lunch it was quite apparent that the case ought to be affirmed, or reversed, and those we disposed of pretty promptly, but the usual way was that we had a conference, sometimes it was agreeable to all the judges, and gave them an opportunity to study up the records.

Q. And was it the practice before the argument to read the briefs and the records? A. Oh, no, I never saw a brief or a record.

Q. Now, was it the infallible practice to have conferences on cases that were heard by the Court of Appeals of the Third Circuit? A. Oh, to have conferences? 5414

Q. Yes. A. Yes, except, as I say, that some of these cases were quite apparent, they could be decided right away.

Q. Now, at those conferences,— A. Yes.

Q. —when cases were assigned for reports,— A. Yes.

Q. —what did that mean?

Mr. Harris: Reports?

Mr. Thiess: Report.

Mr. Harris: Never heard of such a practice. Where is the evidence of that? There is no such evidence. 5415

By Mr. Thiess:

Q. Do you remember that? A. What is that?

Q. Were cases assigned for report at a conference? Do you remember that that was done? A. Sometimes, yes.

Q. And what was that done for? A. Well, that was a practice that grew up through Judge McPherson, where the Court was in doubt about a case, and the conference had showed there was some uncertainty about it, why, some member of the Court was asked to look into the case more

thoroughly than we had been able to give it, and to report to the Court.

Q. Now, can you also tell me, what was the practice when the cases were assigned for opinion—— A. Well,——

Q. —at the conference? A. —the Judge wrote the opinion and sent it around to the other Judges for their criticism or suggestion or approval.

Q. Now, what was the practice when cases were assigned for action? Do you remember that? A. How do you mean, for action?

Q. Well, for further action by some member of the Court.
5417 A. Oh, you mean for an opinion?

Q. For—— A. An opinion?

Q. For an opinion or—— A. Oh, in some way he was designated to file the opinion.

Q. Well, were cases ever assigned for opinion before conference was held? A. I don't think so, unless—no, I have no recollection of that.

Q. Have you any recollection of conferences being held after the case had been assigned for an opinion? A. Conferences after the case had been assigned for an opinion?

Q. Yes. A. No, I don't know, except some Judge might —at lunch or the next conference—might say something
5418 about the case and his difficulties or something of that kind, but there was no settled practice.

Q. There was no settled practice? A. I don't think so.

Q. And is it possible that a case might have been assigned for an opinion before you had a conference? A. Oh, as I say, some of these cases were quite apparent, they ought to be affirmed or ought to be reversed, and as soon as we heard them, and there was no need of any conference, except informal talk at a luncheon, or something of that kind.

Q. Well, do you remember whether there was ever any case or cases where you had a case that was not of that character that you have just mentioned, in which they were assigned for opinion before a conference?

Mr. Harris: Just a minute, I want to object to that. This has all been hypothetical so far. I have allowed it, Your Honor, on the theory that in some way not disclosed to ordinary human minds there might be some bit of materiality to it or some relation to this case. But in so far as the present question is concerned it seems to me it is so extremely hypothetical that we first ought to find out what the Judge knows about this case, and then if it becomes necessary to question him about the practice, to show that this case was unusual in any respect, it would have some bearing; but to find out whether there were unusual practices before he determines what happened in this case seems to me utterly useless to the Court. 5420

The Master: I think that is the way you should proceed, Mr. Thiess, to ask Judge Buffington about this case, and then if you find or suggest that that is unusual you may ask him that afterwards. Don't you think so?

Mr. Thiess: Well, apparently from the Judge's recollection there wasn't any definite practice.

Mr. Harris: I think you are one hundred per cent wrong, from what he said. 5421

Mr. Thiess: Well, that is what I gathered from what he said. Well, I will proceed the way you suggest, Your Honor.

The Master: Yes.

By Mr. Thiess:

Q. Judge Buffington, do you have any recollection of the case of Universal versus Root? A. That is the case that Judge Denison——

Q. Yes. A. —was concerned in?

Q. Yes. A. Yes, there were two cases.

Q. Yes, there were two cases,—— A. That is right.

Q. —but they were consolidated—— A. They were consolidated.

Q. —and heard at one time. A. Heard together.

Q. Do you remember anything with respect to the argument of that case? A. Absolutely nothing, except the part—did you—you took part in the argument, did you?

Q. I did, yes. A. Well, you will pardon me for not recollecting. I was impressed with the peculiar situation, and spoke of it at the time the case was called for argument,

5423 there was Judge Nields, who had decided the case—am I right?

Q. You are right. A. There was Judge Denison, who was counsel, or, at least, I regarded him as the leading counsel——

Q. Right. A. —on your side.

Q. That is right. A. There was Judge Haight, who had formerly been a member of the Circuit Court of Appeals, and Judge Morris, who was a retired District Judge, and myself. That made six judges.

Q. That is right. A. And I called attention to the peculiar thing at the time, I don't know whether you remember,——

5424 Q. I remember. A. —that maybe we could change place, and if the counsel would come up on the bench,——

Q. I remember that. A. —and decide the case.

The Master: They wouldn't have so much trouble, would they?

Mr. Harris: Probably a divided court.

By Mr. Thiess:

Q. Do you remember anything about that case with respect to the issue of vaporization? A. Oh, I can't—with the passage of years, and my mental—I am perfectly strong

physically, but my mentality is exceedingly—to give a discussion of the merits of that case, I couldn't do it.

Q. Judge Baffington, I show you a letter dated February 28, 1935,——

Mr. Harris: February 18th.

Mr. Thiess: January 18th.

Mr. Harris: January 18th; you said February.

Mr. Thiess: 1935.

By Mr. Thiess:

Q. —from you to Judges Woolley, Davis and Thompson Can you see that? A. Yes. 5426

The Master: That is a photostatic copy, isn't it?

Mr. Thiess: That is a photostatic copy of the letter, Amici Exhibit 102.

The Witness: Yes.

By Mr. Thiess:

Q. And that is a letter that you sent out assigning cases as of January 18, 1935, is it not? A. "The following is a list of assignments of cases heard during the December and January sessions." —Yes, the letter is—it assigns a number of cases there.

Q. And the cases that were assigned to Judge Davis in- 5427 clude the two cases which I have referred to before, the Universal versus Root cases? A. Yes, I presume so. You state so, and I presume that is a fact.

Q. Now, do you have any recollection respecting a conference with respect to the Root cases prior to the time that this letter of January 18th, 1936, was written? A. All a blank to me. I have no recollection.

Mr. Behrens: '35.

Mr. Thiess: '35, make that 1935.

The Witness: Read that last question to me.

5428 *Joseph Buffington—For Amici Curiae—Direct*

(The question was repeated by the reporter as follows:

"Q. Now, do you have any recollection respecting a conference with respect to the Root cases prior to the time that this letter of January 18th, 1935, was written?")

The Witness: I said I had no recollection.

Mr. Thiess: That is right.

The Witness: I should correct that to this extent,
5429 that it disclosed, when we came to consider the case, that Judge Thompson and Judge Davis held that Judge Denison's side of the case was—was, let me see—well, they were—they were against Judge Denison's contention, and my contention was that Judge Denison's contention was right and should prevail.

By Mr. Thiess:

Q. And you don't know when that conference was held,— A. Oh, no.

Q. —when you came to that conclusion?

Mr. Harris: Ask him if it was held before this
5430 letter.

By Mr. Thiess:

Q. Do you know whether it was held before or after this letter of January 18th, 1935, in which you assigned these cases? A. I really have no recollection on the subject.

(Discussion off the record.)

Mr. Harris: Are you going to interrogate him about some conference notes in other cases?

Mr. Thiess: I am going to ask him about some notes on here and ask him whether it is his writing and whether he knows what those mean.

Mr. Harris: In other cases?

Mr. Thiess: Yes.

Mr. Harris: Well, I object to that as incompetent, irrelevant and immaterial. There is no reason shown here why that—I mean, I don't see the object of it. Do you mind explaining it?

The Master: What is it?

Mr. Thiess: Well, the object of it is, we have here on these conference notes, these are cases that are assigned in this particular letter of January 18, 1935, and in one of these conference notes the three Judges are for reversal, and it says, "To be assigned to J. W. J. on . . . . " I can't read that, now. 5432

Mr. von Holst: J. W. J.

Mr. Thiess: J. W. J. on——

Mr. Harris: Who is that?

Mr. Thiess: On something.

The Master: J. W. T., isn't it?

Mr. von Holst: Yes.

Mr. Thiess: It should be J. W. T.

The Master: Yes. 5433

Mr. Thiess: On something, on exhaustion of remedy.

And I have another case here where there is no indication at all as to how the judges stand, and it said, "Referred to Judge Davis for action".

I would like to ask him about those notes.

The Master: Well, it may have some bearing.

Mr. Harris: Your Honor, I certainly object to this Pennsylvania Railroad against Terminal Warehouse case.

Mr. Thiess: Those are cases that are assigned in this letter.

Mr. Harris: I understand, but this doesn't show as of that date Judge Buffington wrote that.

Mr. Thiess: I don't even know whether that is Judge Buffington's writing, I am going to ask him.

Mr. Harris: Well, whosoever's handwriting it is, it indicates the three Judges are for reversal, and to be assigned to J. W. J.

Mr. Thiess: J. W. T.

5435 Mr. Harris: Well, it probably means Judge Thompson.

The Master: He did write the opinion, as a matter of fact. That was my case.

Mr. Harris: It was? On ground of exhaustion of remedy, it looks like.

The Master: That is right.

Mr. Harris: And suppose Judge Buffington, or Judge Davis, or Judge Thompson did write that on there, what has that got to do with it?

The Master: I don't think it has any real bearing on the case, but——

Mr. Harris: Well, I object to it.

5436 Mr. Thiess: Well, it does have this bearing, if Your Honor please, these cases were assigned——

The Master: Yes.

Mr. Thiess: —by this letter——

The Master: Yes.

Mr. Thiess: —of January 18th. Now, I don't know, and I want to find out from Judge Buffington as to whether or not these notes on these cases would indicate that they had had a conference on those cases.

Mr. Harris: Well, they must have, they are all for reversal.

Mr. Thiess: Well, here is one that hasn't got anything on it.

Mr. Harris: Well, I am talking about this one for the moment, the Pennsylvania Railroad case.

Mr. Thiess: I want to ask him about the notes on both of those cases.

Mr. Harris: Well, you can't make one that is irrelevant relevant simply by showing him another document that might be relevant. Let's deal with one at a time.

Mr. von Holst: I submit, if the Master please, that if there are three assigned in this letter that Mr. Thiess wants to interrogate about, he can interrogate about all of them. 5438

The Master: Well, as I understand, Mr. Thiess thinks something may develop here relating to the time within which, or when a conference was held in the Root case. I think it is rather remote, but I I will receive it.

Mr. Harris: I have no objection if he thinks this will show when the conference was held in the Root case, if that is the object of it. Is that right, Mr. Thiess?

Mr. Thiess: No.

Mr. Harris: He says, no.

Mr. Thiess: The proposition is about the assigning of cases, as to whether it was infallible practice to have a conference prior to the time that the case was actually assigned. 5439

The Master: Judge Buffington has already said that it was the usual practice, but not always.

Mr. Harris: Except in those obvious cases where they didn't need a conference.

The Master: Well, I think he said more than that, that sometimes the assignment might be made before the conference, I think he said.

Mr. Harris: Oh, I didn't hear that. I would like you to ask him that.

The Master: I understood him to say that.

Mr. von Holst: I so understood him.

Mr. Harris: Would you mind asking him that again, and make it clear?

By Mr. Thiess:

Q. Judge Buffington, was it or was it not the usual practice on cases to have a conference before they were assigned for opinion? A. Oh, I think where a conference was necessary we always had it.

By Mr. Harris:

Q. Always? A. I think so.

By Mr. Thiess:

Q. You think it was the infallible practice to do that? A. Oh, no, it was no practice, it just—if we felt the case was—turned—well, I guess maybe I am a little confused. It is hard for me to concentrate.

Q. I understand. A. Let me say this, that where there was a division of opinion apparent in our discussion, not at any formal conference, either at a conference or just in the interim of the court, where it was apparent that there was a division—as there was in this case, Judge Thompson and Judge Davis holding to one opinion, and I holding to the other, I may say that the other two men, and I wouldn't exclude myself, were pretty determined customers, and where they had—where I found myself in a condition where there was a division of opinion, I didn't attempt to say who would write the majority opinion at all, I left that entirely to the directions of the two Judges, because they would know which one of them would write the stronger

opinion—the temptation comes to a man who has the power to appoint, to appoint the weaker man to write the majority opinion—and I infallibly sought to find out what the counsel who differed from me—what person should write the opinion.

Q. Am I right or not, Judge Buffington, in view of what you just said, after you left the bench, did you discuss the case that you had just heard with your associates?

Mr. Harris: The Root case?

Mr. von Holst: Root case, yes.

Mr. Thiess: Well, the Root case. 5444

A. I have no recollection whatever on the subject. I only know that I was firmly of the opinion that your side of the case was right and the other people were wrong, but I didn't record any dissent because I didn't think it was a case where I ought to dissent. I have always regarded dissents as a kind of a—to be avoided, especially where, as in this case, it was a matter of—either side might—both sides might write strong, convincing opinions, according to their views of patent law.

By Mr. Thiess:

Q. I didn't quite understand why you decided not to file a dissenting opinion. 5445

Mr. Harris: Now, just a minute,——

A. In this case——

The Master: I think he has explained it.

Mr. Thiess: All right, that is O. K., they think you have explained it.

Now, I would like to mark this as Amici Exhibit 194 for identification, that is, Judge Thompson's notes

Curiae—Direct

nistrator of the Estate
; and mark the Penn-
ants Warehouse Com-
use Company as Amici

on. J. Whitaker Thomp-
zsch, Administrator of
Paradis, et al., in the
peals for the Third Cir-
Exhibit 1.4 for Identifi-

on. J. Whitaker Thomp-
Pennsylvania Railroad
Company versus Ter-
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ci Exhibit 194 for Iden-
son's notes, conference

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ndwriting or not, I can't

ever notes I had in all
ong time ago, and I have

no notes or nothing to refresh my memory in any of these cases.

Q. Well, on this particular set of notes—this is Judge Thompson's notes—he has after the Judges' names as you there see, "Referred to Judge Davis for action". With that sort of a note on there—— A. What?

Q. With that sort of a note on this exhibit, would that indicate whether you had had or did not have a conference? A. I have no recollection. I never saw this paper—at least, I may have, that may be my handwriting, I don't know.

Mr. Harris: May I see that? You are through with it for the moment? 5450

Mr. Thiess: Yes.

By Mr. Thiess:

Q. Judge Buffington, on this document, Amici Exhibit 195, do you know whether that is your handwriting, the matter in pencil at the top here (indicating)?

Mr. Harris: Well, will you tell him that comes from Judge Thompson, too?

By Mr. Thiess:

5451

Q. That is from Judge Thompson's records. A. I know nothing about this paper.

Q. And you don't recognize those pencil notes as your handwriting? A. I have no—I can't say at all. It is on Judge Thompson's papers.

Q. That is right. Now, Judge Buffington, do you have any recollection of seeing Judge Denison before the argument in the Root case? A. In this?

Q. In the Root case. A. Oh.

Q. Do you remember seeing Judge Denison before the argument in the Root case? A. I saw the Judge some place; where I don't remember.

The Master: What is your purpose there, Mr. Thiess?

The Witness: I don't think——

Mr. Thiess: Well, in view of the accusation that has been made——

The Master: Oh, that doesn't have any effect on my mind. Judge Buffington and he were old friends, and if they wanted to meet I don't think anybody is going to question it.

Mr. Thiess: All right.

Mr. Harris: Well, I am not sure about it, Your
5453 Honor.

The Master: If you wish to——

Mr. Harris: After all, the suggestion has been made that possible attempts at influencing judiciary may have been on the other side.

The Master: Well, if you want to pursue it, all right.

Mr. von Holst: In view of that statement——

Mr. Thiess: That is the only reason we are doing it.

The Master: Very well.

5454 *By Mr. Thiess:*

Q. Do you have any recollection of meeting Judge Denison before the argument? A. I have no recollection. I know I saw him, I was under the impression I saw him out in Cleveland, or some place, after the case was disposed of, and told him at that time that he might be gratified to know that my views were with him. That is all the recollection I have about it.

Q. Well, you have no recollection of seeing him here in Philadelphia prior to the argument. A. Oh, no, I have no recollection of anything of that kind.

(Discussion off the record.)

By Mr. Thiess:

Q. Did you ever talk to Judge Davis about seeing Judge Denison prior to the argument in the Root case, seeing Judge Denison here in Philadelphia? A. I have no recollection of any such talk.

Q. Do you have any recollection of ever telling Judge Davis that you had dinner, or supper, with Judge Denison prior to the argument in the Root case? A. I have no recollection of that kind.

Q. Do you have any recollection that you told anyone that Judge Denison slept in the same room with you prior 5456.
to the argument in the Root case? A. Oh, my, no, I have no recollection of anything of that sort. Gracious!

Q. Well, would you say that Judge Denison did not sleep with you—— A. Oh, my,——

Q. —in the same room prior to the argument? A. Why, gentlemen,——

Q. Well, there has been a statement of that kind made. That is why I am asking you the question. A. Sir?

Q. There has been some intimation of that sort.

Mr. Harris: There was more than that.

Mr. Thiess: All right.

Mr. Harris: Judge Davis testified to that. 5457

Mr. Thiess: He did not.

Mr. Harris: He did.

Mr. Thiess: He said he heard——

Mr. Harris: Well, I understand, but he testified that he heard.

Mr. Thiess: Well, then, I will tell him.

Mr. Harris: Yes.

By Mr. Thiess:

Q. Judge Davis said that he had heard that someone had made that sort of statement. That is why I asked you that question. A. Oh, gentlemen, I—I am really—well I

never had any thought of, or any—why, the Judge never stayed in my room, I had no talk with him of that kind. I don't know how such a thing could have originated.

Mr. Harris: I think you ought to tell him that Judge Davis said that Judge Buffington told him, Davis, that he had dinner with him that night.

Mr. Thiess: I did tell him.

Mr. Harris: No, you didn't, you didn't say that Judge Davis said that.

Mr. Thiess: Well, if you want to cross-examine
5459 him on that——

Mr. Harris: All right.

By Mr. Thiess:

Q. Judge Buffington, did you ever hear Morgan or David Kaufman's name mentioned in connection with the Root case? A. Absolutely not, I never heard anything of that kind until this present proceeding was started here a few weeks ago.

Q. Now, do you remember—you say you heard it a few weeks ago? A. Well, it was in the paper.

Q. I see, do you remember when that was? A. Oh, no,
5460 the record will probably show what time the present proceeding was begun.

Q. And it is your recollection that that was in the paper? A. Well, I was under the impression that it was.

Q. Did anybody ever tell you, Judge Buffington, outside of what you have read in the paper, that Morgan Kaufman was associated in this Root case? A. Never.

Q. Do you remember, Judge Buffington, that you spent the winters of 1935, '6 and '7 in Florida at the Battle Creek Sanitorium? A. Yes.

Q. And do you remember that when you were there Judge Davis was there for part of the time, and both Morgan and David Kaufman? A. They were all there some time.

Q. And do you remember that they were there in 1935? A. I think they were.

Q. And while you were at the Battle Creek Sanitorium, did you do any work there on your cases? A. Oh, yes.

Q. And did you discuss your cases that you were working on in which Judge Davis was interested with him? A. I took a lot of work down with me at times and I wrote numerous opinions down there, and where the cases involved, or where Judge Davis was concerned in the—had taken part in the cases, and he was there, I naturally submitted my opinion to him before I sent it up to be shown the other Judges, 5462

Q. Did you discuss the cases with him while you were down there that he was interested in? A. I presume—I have no recollection particularly of anything, but if there was any case that he had sat in and I was writing an opinion in it and had prepared one, I would naturally give him the opinion there and see whether he was satisfied, before I sent it to the other Judge who was not present.

Q. Do you remember at all discussing these cases with him before you wrote the opinion, that he was interested in? A. I have no recollection about that. I don't think I did, because——

Q. Have you any recollection of whether Judge Davis 5463 worked on cases while he was down in Florida? Did he discuss them with you? A. I have no recollection especially about it, I presume he did, because his stenographer was down there and I availed myself of her help wherever I could relieve myself from the physical writing of opinions.

Q. Do you or do you not have any recollection at the present time of discussing the Root case—— A. Oh, no.

Q. —with Judge Davis down there? A. Oh, no.

Q. Do you recall, Judge Buffington, the Fox bankruptcy cases that came before the Court—— A. The what?

5464 *Joseph Buffington—For Amici Curiae—Direct*

Q. The Fox, F-o-x, bankruptcy cases that came before the Court of Appeals—— A. Oh, yes.

Q. —of the Third Circuit. A. Oh, yes.

Mr. Harris: Now, may I note on the record my continuing objection——

The Master: Yes.

Mr. Harris: —and exception to this testimony?

The Master: That is understood.

By Mr. Thiess:

5465 Q. Now, as I understand from your previous testimony, you did not write the opinions in those five cases, is that correct? A. That is right.

Q. Do you remember at the present time what Judge of the Court did write those opinions? A. Judge Davis did.

Q. Judge Buffington, have you any recollection at the present time of a visit to Atlantic City in May of 1936, in company with David and Morgan Kaufman, and staying at the Traymore Hotel? A. No, I didn't stop there at all. I went down to Atlantic City just for a holiday, at my recollection, and——

Q. Maybe I can refresh your recollection, Judge Buffington. This is a photostatic copy of the registration card at the Traymore Hotel in Atlantic City. It is dated May 2nd, 1936, showing that you were there May 2nd and May 3rd of 1936. Does that refresh your recollection at all?

(The witness examined the card.)

A. No. I know that contention was made, but I looked at the record up in the Bellevue-Stratford—it is a long time ago, and I was charged with and occupied my room at the —at the Bellevue-Stratford that night.

By Mr. Thiess:

Q. So you have no recollection of being there and your recollection, in view of your check at the Bellevue, is that you were at the Bellevue? A. Oh, yes, that was my recollection.

Q. Is this your signature, Judge Buffington? A. I don't think so.

Q. You don't think? A. I don't think——

Q —that that is your handwriting. A. I have no recollection about it. I went down—I went over to the Bellevue, to the—what is the name of that Hotel? 5468

Q. Traymore. A. Traymore, I went over, I usually stopped at the Bellevue-Stratford—I mean, at the Marlborough-Blenheim, and somebody said, "Look and see what a fine room you get at the——

Q. Traymore? A. —Traymore," and I went up and looked at the room, but as for staying there all night, I did not do it.

Q. You don't know whose handwriting this is, do you, Judge Buffington,—— A. No, I don't.

Q. —on this hotel register card? A. No, I don't.

Q. Do you know whether it was—do you know David Kaufman's handwriting? A. Not enough to say. I don't know who wrote that. 5469

Mr. Harris: I think if you would show him the other card maybe it might help him a little.

Mr. von Holst: Which one, Morgan?

Mr. Harris: No, David. You see, they were assigned the same room——

Mr. von Holst: That is right.

Mr. Harris: —and it looks like the same handwriting.

The Master: The handwriting is the same, obviously.

5470 *By Mr. Thiess:*

Q. I show you another hotel register card in the handwriting of David Kaufman—I mean, assigned to David Kaufman, as of the same dates, May 2nd and 3rd, 1936, and the room occupied by David Kaufman is 732, which is the same room number of the registration card that bears your name. Do you recognize the handwriting on the registration card carrying David Kaufman's name as his handwriting?

(The witness examined the card.)

A. No, I don't know.

5471 *By Mr. Thiess:*

Q. Judge Buffington, do you have any recollection of meeting with Morgan and David Kaufman and Mr. Steedle in Atlantic City in 1936? A. No, I was introduced to a large number of people there, and I may have. Who is he?

Q. He was the referee in bankruptcy in the Fox litigation in Atlantic City. A. I have no recollection except that I was introduced to a number of people and I may have been introduced to him. I would have you understand that when a man is in public position he meets a great many people, a great many people, and he can't begin to remember

5472 about them.

Mr. Thiess: That is all.

(Discussion off the record.)

Mr. Harris: There is no cross-examination.

The Master: Very well, then, we are through with Judge Buffington.

Mr. Harris: Your Honor, I have just spoken to Mr. Thiess and Mr. von Holst about this proposition; we should like to have it deemed that the entire record, including the briefs in the Root case is for the purpose of briefs and argument and any other pur-

5473

pose in this case deemed part of the record, without making it physically a part of the record in this case.

The Master: There is no objection to that?

Mr. von Holst: We have no objection.

Mr. Thiess: No objection.

The Master: That may be understood. Then you can refer to any parts of that——

Mr. Thiess: Certainly.

The Master: —but it need not be made a part of this record——

Mr. Thiess: That is right.

5474

The Master: —except by reference.

Mr. von Holst: If the Master please, we have some matters we might dispose of at this time. First of all, I wish to file with the Master the two subpoenaes on William Fox and one subpoena on Belle Fox, both of which were returned by the Marshal in New York as not served.

Then I wish to offer as Amici Exhibit 196 the correspondence or copies of the correspondence that have been furnished by the plaintiff——

Mr. Harris: You mean by the co-Amici.

Mr. von Holst: I beg your pardon, strike out "plaintiff"—by Universal, comprising correspondence 5475
in the Crew-Levick case, as Amici Exhibit 196.

Mr. McCullough: Subject to correction, comprising thirty-two pages.

Mr. von Holst: You counted them, I will accept your count.

Mr. McCullough: It starts with the letter of March 25, 1938, is that right?

Mr. Thiess: December 11th, 1935.

Mr. McCullough: One you have cut off?

Mr. Harris: These are probably not arranged chronologically. December 11th, 1935?

5476 *Colloquy*

Mr. von Holst: Yes.

Mr. Harris: That is the last. They are reversed. The last one is March 25, 1938?

Mr. von Holst: Just a second.

Mr. Thiess: 31 is correct, and the first one. On the other end we have September 16, 1937.

Mr. McCullough: There is one more.

Mr. Harris: March 25th.

Mr. von Holst: That was already in with a different exhibit number.

5477 Mr. Harris: Well, might as well leave it in. You said this comprises all of the correspondence.

Mr. Thiess: That is right.

Mr. von Holst: Let me amend that by saying all of the correspondence except one previous letter which had been offered in evidence.

Mr. Harris: Namely, a letter from Mr. Kaufman to Judge Haight dated March 25, 1938, which is Amici Exhibit——

Mr. von Holst: Amici Exhibit 79.

Mr. McCullough: Then 31 is correct.

(Copies of the following letters were marked
5478 Amici Exhibit 196:

Copy of letter dated December 11, 1935, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated January 13, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated January 14, 1936, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated January 15, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated January 16, 1936, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated March 2, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated March 20, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated March 21, 1936, from Marguerite H. Asselin, Secretary to Judge Haight, to Mr. Morgan S. Kaufman.

Copy of letter dated April 10, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated April 13, 1936, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated May 6, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated May 7, 1936, from T. G. Haight to Mr. Morgan S. Kaufman. 5480

Copy of letter dated July 16, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated July 20, 1936, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated August 5, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated August 6, 1936, from Marguerite H. Asselin, Secretary to Judge Haight, to Mr. Morgan S. Kaufman.

Copy of letter dated August 10, 1936, from Marguerite H. Asselin, Secretary to Judge Haight, to Mr. Morgan S. Kaufman. 5481

Copy of letter dated November 23, 1936, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated November 25, 1936, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated February 7, 1937, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated May 12, 1937, from T. G. Haight to Mr. Morgan Kaufman.

Copy of letter dated May 20, 1937, from Morgan S. Kaufman to Hon. Thomas G. Haight.

5482 *Colloquy*

Copy of letter dated May 21, 1937, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated June 7, 1937, from T. G. Haight to Mr. Morgan S. Kaufman.

Copy of letter dated July 14, 1937, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated July 17, 1937, from Marguerite H. Asselin, Secretary, to Mr. Morgan S. Kaufman.

Copy of letter dated August 17, 1937, from Morgan S. Kaufman to Hon. Thomas G. Haight.

5483 Copy of letter dated August 19, 1937, from Wall, Haight, Carey & Hartpence to Mr. Morgan S. Kaufman.

Copy of letter dated September 15, 1937, from Morgan S. Kaufman to Hon. Thomas G. Haight.

Copy of letter dated September 16, 1937, from T. G. Haight to Mr. Morgan S. Kaufman.

Mr. von Holst: I offer in evidence as Amici Exhibit 197 the bill of Mr. Belknap of June 6th, 1932, which was furnished to us by counsel for Universal as being in addition to the Belknap diaries.

Mr. McCullough: This is a copy you made, I pre-

5484 sume.

Mr. von Holst: I think it is a copy that you furnished us, isn't it?

Mr. Harris: I don't think so.

Mr. McCullough: Because we had photostats made of it and that is not a photostat.

Mr. Harris: And the second page doesn't seem to be a part of this.

Mr. von Holst: Well, this second page is the expenses.

Mr. Harris: Oh, yes, that is right, we did furnish this, because apparently we took out the amounts.

Mr. Thiess: That is what I thought.

Mr. Harris: That is right, this is the one that is marked in evidence.

Mr. Thiess: Let's get that marked.

(Discussion off the record.)

Mr. Harris: It will be understood that the amount of the services and the amounts of the disbursements have been left out pursuant to consent of the Master.

Mr. Thiess: That is right.

The Master: We have, however, elsewhere in the record the entire amount paid to Judge Haight in this particular case.

Mr. Thiess: That is right. 5486

Mr. Harris: This is Mr. Belknap.

The Master: Oh, Mr. Belknap, yes.

(Copy of bill dated June 6th, 1932, of Mr. Belknap to the Universal Oil Products Company, including services and expenses, was marked Amici Exhibit 197.)

Mr. von Holst: Now, I offer in evidence as Amici Exhibit 198 a copy of a letter dated September 25, 1934, signed by Victor B. Woolley, addressed to Judge Haight. This letter, Mr. Harris, is referred to in Universal Exhibit 1, which was a file of letters of correspondence between Judge Denison and Judge 5487
Woolley, which you introduced in evidence.

Mr. Harris: Oh, yes, all right. Has this been identified? Did we produce it?

Mr. von Holst: Yes.

Mr. Harris: Oh, all right. I thought you did. I will include the one in that sheaf. Well, it was by error we didn't include it.

Mr. Thiess: That is right.

Mr. von Holst: And we called your attention to it afterwards and you produced this in addition.

Mr. Harris: All right.

ptember 25, 1934, from
able Thomas G. Haight
198.)

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Kaufman-Stokley con-
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timony of Judge Davis
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w, we think that is a
to know whether coun-
e.

Mr. Harris: No, we don't know that to be a fact and we can't stipulate it. The testimony taken so far, including that of Mr. Lord, would seem to contradict that. If you have the document, we can look at it, and, of course, not be technical about it, but I have no knowledge that would lead me to believe that that is a fact.

Mr. Thiess: Well, then, we better see whether we can get the original.

Mr. Harris: Right.

The Master: Where is the original, do you know?

Mr. von Holst: Mr. Gahagan had it at the trial. 5492
Now, whether he has it or whether he returned it to Mr. Kaufman or Stokley we don't know.

The Master. Did Mr. Gahagan say he did not have it, or didn't you ask him?

Mr. Thiess: I doubt whether we asked him.

Mr. Harris: He didn't ask him.

Mr. von Holst: What we had and showed him, of course, were the photostatic copies of the contract.

Mr. Harris: As executed.

Mr. von Holst: As executed and as of record.

Mr. Thiess: They so testified, Davis so testified in both trials.

5493

Mr. Harris: Well, he testified differently here.

Mr. Thiess: No, he didn't, not as far as the paper was concerned.

Mr. Harris: Well, I thought he did.

(Discussion off the record.)

Mr. von Holst: Well, we will pass that.

Now, we offer in evidence—we would like it to go in as a physical exhibit, without it being copied into the record—the certified copy of the minutes of the Circuit Court of Appeals for the months of December,

5494

1934, and January, 1935, showing the full activities of the Court for the two months in question.

The Master: Do you have that there?

Mr. von Holst: Yes. There seems to be a mistake in the numbering of the pages, it seems to run consecutively, but 3247 goes to 3249.

The Master: This doesn't seem to show what Judges were sitting.

Mr. von Holst: Pages 3274 is missing, according to this number, but it seems to be a mistake in numbering.

5495

Mr. Thiess: We expect to get something further from Mr. Rowland as to the Judges that are sitting. He has something over there now that he is working on, Mr. White.

(Discussion off the record.)

The Master: Is there any objection—

Mr. Harris: Well, I haven't seen it yet.

The Master: —for whatever relevancy it may have?

Mr. Harris: I certainly think we are entitled—when even Your Honor doubts the relevancy of it—to know for what purpose they are being offered.

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Mr. Thiess: Well, if Your Honor remembers, you suggested that it would be advisable to get this document to show the activity of that Court during that period, and we got this, and we are also getting from the Clerk the counsel that sat in these various cases.

The Master: Judges, you mean.

Mr. Thiess: I mean the Judges.

The Master: I think there was a question that was raised, Mr. Harris, as to how long in January the Court was sitting, in view of the assignment of cases. It might have some relevancy.

Mr. Thiess: Yes.

Mr. Harris: Well, if we can see, if those show any activity of the Court after the hearing of the Root case by this particular bench it would have some relevancy, but I don't see what December or any part of January prior to the hearing of the Root case would have to do with it, if the only question was whether the Court at the time, as I understand it, after the Root case was argued would have decided the case by the 18th.

Mr. Thiess: Also, if Your Honor remembers, it was the question of the cases that they had under advisement at the time that they had the conference. 5498

Mr. Harris: But this doesn't show that.

Mr. Thiess: Certainly it does.

Mr. Harris: It doesn't.

Mr. Thiess: It shows all the cases they had in January.

Mr. Harris: Well, just a minute, that is what I say, in January, but how about December?

Mr. von Holst: Shows December, too.

Mr. Harris: Well, we don't know how many of those they had before them after the 5th of January. They may have all been disposed of. 5499

Mr. von Holst: The letter of assignment shows how many were assigned in January.

Mr. Harris: Well, that doesn't purport to be all of the assignments, does it?

Mr. von Holst: No.

Mr. Harris: Well, we don't know how many have been assigned.

The Master: Well, probably very little of it may be revelant but I don't think it could do any harm.

Mr. Harris: Well, it only adds to an already absurd record.

5500 *Colloquy*

The Master: Well, I understand it is not to be copied.

Mr. von Holst: Going as a physical exhibit.

The Master: Simply as a physical exhibit to which reference can be made if counsel desire.

Mr. Harris: It is very difficult for us to determine what is any other evidence we want to produce unless we know what the object of these nebulous offers is. I am at a loss to understand what the purpose of this is.

5501 The Master: Can you explain any further what the purpose is, Mr. von Holst?

Mr. von Holst: These documents that have been offered show the number of cases that the Court heard and what the Court did in December and January, and show that they had a great many cases under consideration. Now, the proof is that this argument——

Mr. Harris: Well, I don't think the——

Mr. von Holst: May I finish?

Mr. Harris: Excuse me.

Mr. von Holst: —was heard in the Root case on January 7th, and that by the end of that week the

5502 Court had gone down to Florida.

Mr. Harris: Oh, no.

Mr. Thiess: At the end of that month.

Mr. von Holst: At the end of that month, I misspoke myself, at the end of the month the Court had gone down to Florida.

The Master: Yes.

Mr. von Holst: This whole first week in January was taken up with arguments.

The Master: Yes.

Mr. von Holst: The conference notes are not dated in the Root case, there is a question when that con-

ference was held, and it is part of our position that it may well be that there was just no time to hold a conference on as important a case as the Root case was before the end of January.

Mr. Harris: Well, my gracious; you have Judge Davis's testimony, you had Judge Buffington here this morning, and Judge Buffington certainly did not give the impression that there was any doubt about this having been decided before it was assigned. The only exceptions were cases where they all agreed, where the affirmance or reversal was obvious.

5504

Mr. Thiess: Judge Buffington and Judge Davis both testified, as I remember their testimony, that they didn't know definitely when that conference was held.

Mr. Harris: Except that it was held, except they were sure it was held before the cases were assigned for opinion.

Mr. von Holst: Judge Buffington said there was no established practice.

Mr. Harris: He didn't say any such thing.

Mr. von Holst: The record will speak for itself.

Mr. Harris: Well, yes, but how you can make an argument of that sort before a Master where you appear as Amici, is beyond me. I think that in a proceeding of this sort we owe the Court the utmost candor.

5505

Mr. Thiess: That is what we are trying to do.

Mr. Harris: I don't think you are. I think when you say that this shows that the Court on January 7th had a vast mass of, or number of cases, and a vast amount of labor before it, and therefore you can argue from it they could not have decided this important case by the 18th of January, I don't think you are being candid. I think you are making a casuistical argument of the first order.

5506

Mr. Thiess: Well,——

Mr. von Holst: Well, I am not interested in repelling Mr. Harris's aspersions.

Mr. Harris: They are not aspersions. You are here as an ordinary litigant, and don't try to conceal it.

Mr. von Holst: They tend to show what the occupation of the Court was in this important period.

The Master: Well, as I understand that offer, it is to show the activity of the Court in December and January, the number of cases which had been argued

5507

and were under consideration, the record would also show which of those had been decided, and while I don't know that much of this would have any direct bearing on this issue, I think we can receive it as a physical exhibit to which either counsel may refer if they desire to do so.

(Certified copy of pages 3241 to 3277, inclusive, of the Minutes of the Clerk of the United States Circuit Court of Appeals for the Third Circuit, from December 1, 1934 to December 28th, 1934 was marked Amici Exhibit 199.

Certified copy of pages 3278 to 3294, inclusive,

5508

of the Minutes of the Clerk of the United States Circuit Court of Appeals for the Third Circuit, from January 2, 1935 to February 1, 1935 was marked Amici Exhibit 199-A.)

Mr. von Holst: We offer in evidence as Amici Exhibit 200 a certified copy of the minutes of the Court in the Root case—I haven't a carbon of that—produced hereby, or sent in by Mr. Rowland, the minutes in the Root case.

The Master: In the Root case; any objection to that?

Mr. Harris: Well, I object to it as immaterial. I don't object to it as being a certified copy of the record. 5509

The Master: It looks like quite a formidable document.

Mr. McCullough: It isn't quite as formidable as the January and December dockets.

I presume you will send us a copy of this.

Mr. von Holst: Yes.

(Certified copy of minutes of the Clerk of the United States Circuit Court of Appeals for the Third Circuit in the cases of Root Refining Company versus Universal Oil Products Company (Nos. 5546 and 5648) was marked Amici Exhibit 200.) 5510

Mr. Thiess: Have you considered further that Belle Fox thing?

Mr. Harris: I don't just like to put myself in the position of stipulating something that is so remote.

Mr. von Holst: There is one other matter, and that was that we have called upon Senator O'Mara to supply the dates of Judge Haight's retainer in the Tri-Ergon cases and the trips to Scranton in connection therewith. 5511

Mr. O'Mara: Well, I have the time slips in that case. That one trip to Scranton noted in October, 1934, is the only trip to Scranton in that case.

(Mr. O'Mara produced time slips.)

The Master: Is that in the Root case?

Mr. O'Mara: No, that is in the Tri-Ergon case, Mr. White.

Mr. von Holst: We would like to offer in evidence as Amici Exhibit 201 the time slips—is that what you call them?

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Mr. O'Mara: Time slips, yes.

Mr. von Holst: —produced by Senator O'Mara, showing Thomas G. Haight's time in the Tri-Ergon case.

Mr. O'Mara: That is right.

Mr. von Holst: Comprising sixteen sheets.

Mr. O'Mara: I assume so, if you have counted them.

Mr. von Holst: Will you check?

Mr. O'Mara: I will count them if you want me to.

Mr. von Holst: If you will.

5513

(Mr. O'Mara counted the sheets.)

Mr. O'Mara: Sixteen.

Mr. Thiess: Now, is there anything to be said——

Mr. O'Mara: I would like to have those back.

(Time slips for Thomas G. Haight in the matter of R. C. A. versus Tri-Ergon were marked Amici Exhibit 201.

Mr. Harris: Your Honor, Mr. Thiess and Mr. von Holst want to speak about the services of Senator Reed in the Standard Oil-Universal Oil litigation. They have submitted to us a long statement which

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purports to show the number of times Senator Reed's name appears, and a careful analysis of the services that he performed. We have been unable, or possibly our people have been unwilling, I don't know which, to check it accurately, but I think that it really is not necessary, in view of the statement I am about to make.

I believe that we have been somewhat misunderstood as to the position we take with respect to Senator Reed in that case. I certainly as counsel do not take the position that Senator Reed performed no

services or that he was a "rider" in the sense of getting paid for simply being on retainer. There is a great contrariety of opinion among our own people as to just how many days he was in court and what he did when he was there. I believe, and subject to correction I am willing to stipulate, that his name appears in about ninety-nine out of approximately four hundred hearings. A large part of that, or some of that, was in connection with the taking of depositions in California, as I recall it, I would say a substantial part; it is not important in view of the position I am taking. Even in the taking of those depositions—and 5516
this shows you in order to get the thing accurate we would have to have a lot of testimony—Senator Reed would not be present at all, although his appearance might be noted, he would be with Mr. Harris, or he would come in and note his appearance and leave, or he would come in and stay for a short while and leave, and except in the case of the examination of Mr. Seguy he did not participate in a large way, in a substantial way, I should say, in the examination of witnesses.

Even as to the examination of Mr. Seguy I am informed that Senator Reed was not a patent lawyer, he had the questions and answers all written out in 5517
advance on sheets of paper, and he asked the questions and made sure that the witness finally got into the record the answers that were prepared—nothing improper, because he was purely a technician and it was necessary, of course, for anybody to know what a technical expert is going to testify to. The fact was Senator Reed was paid his per diem as agreed upon, which amounted to a substantial sum, I don't recall what it was. After the case was disposed of by settlement Senator Reed put in a bill for a million dollars. He brought suit, in fact, over a period of several

5518 *Colloquy*

years he brought several suits in his own bailiwick in aid of collecting that fee. Varying fortunes attended these various suits, but finally he got my client sufficiently softened up so that they settled the litigation by paying him a further one hundred and twenty-five thousand dollars.

The same thing was substantially true of Mr. Charles German, except I think his participation was even less.

Now, we don't take the position that Senator Reed did not perform services and that his appearance
5519 was not noted a substantial number of times, and that he did not earn at least what was paid him on his per diem, and we do not mean to say that his situation was identically the same or comparably the same as that of Mr. Kaufman. I think that is where you misunderstood us.

Our position really is that, having had this experience, when Mr. Kaufman saw Mr. Halle and asked for ten thousand dollars in a year for three and one-half years of retainer, when he had done substantially nothing for us except to disable himself from taking any business against us or taking any other oil com-
5520 pany business if it had been offered, when Mr. Halle told him that it was high and that he thought he would recommend twenty-five thousand dollars, and when Judge Haight and Mr. Dwight and Mr. William D. Whitney conferred and said that they thought it was well to dispose of that matter for twenty-five thousand dollars, particularly in view of the fact that the company was expecting to use him in the Pennsylvania suits, where he was attorney of record, at least in one of them, that they were affected in their judgment to some extent by their experience with Senator Reed, Senator Reed had made them pay a

great deal more than they thought his services were worth, and, therefore, they did not wish to go through any similar experience with Mr. Kaufman in his own bailiwick, particularly in view of the fact that the matter could be settled for a reasonably small sum. Now, that is the only position we take in this case.

Now, under those circumstances it does not seem to me very important that we get into a protracted litigation with our brethren across the table as to just what the quantity of the services was, and we are not willing to accept their stipulation of that.

Of course, in the Senator Reed case, I should add, 5522
as I am informed by Mr. Hall and Senator O'Mara, that there Senator Reed claimed an arrangement with Mr. Belknap, at the time the settlement was made Mr. Belknap was dead, so again we have a similarity, where the officers of the company knew that the lawyer was employed but could not deny the arrangement that was alleged to have been made with former chief counsel for the company.

The Master: Did Senator Reed base his claim on a contract with Mr. Belknap or on a quantum meruit?

Mr. Harris: Well, he brought several suits.

Mr. William F. Hall: I am quite sure, Your Honor, 5523
his claim was based on agreement of joint venture made with Mr. Belknap, and that was for this final fee that amounted to a million dollars, having been paid for all of his services, all of the bills he had rendered up to that time. It was supposed that Senator Reed, if this case went to argument, that he would argue this case,——

Mr. Harris: Standard Oil case, you mean?

Mr. William F. Hall: This Standard Oil case, and it was well understood and believed by us that he was the one man in the country to make that argument

5524 *Colloquy*

in that case, and he was to be then paid a fee for that, based on the same considerations that any lawyer of his standing would base his fee upon.

Mr. Harris: All right, I think that is all.

Mr. William F. Hall: However, that all went back to this arrangement with Mr. Belknap. The case was settled before we ever had an argument on the case.

The Master: No argument was ever had?

Mr. William F. Hall: No argument was ever had in the case.

The Master: In any court?

5525 Mr. William F. Hall: In any court.

Mr. Thiess: There were arguments, Mr. Reed represented the company in arguments on questions of law as the case proceeded.

Mr. William F. Hall: Oh, yes, just like my associate here has been objecting to this testimony, he would get up and make these objections or make these small arguments, but I say, for all of that work, for all of that work he was paid, and he never denied it, he never claimed he was not fully paid for all of that work, that is, this per diem work, but then there was this additional fee which he claimed, a million dollars, which he said that he had an arrangement with Belk-

5526 nap that it would be a joint venture and he was to get a share of our recovery. Now, the company sold out lock, stock and barrel. That sale disposed of the suit, so he was never called upon to make the argument that we had expected he would make. But he said, as I recall it in brief, "Now, that is the equivalent to my having won that suit for you, by this argument that you expected me to make. You have got these large fees"—I think it was twenty-five million dollars.

Mr. Harris: Fee?

Mr. William F. Hall: No, sale price, twenty-five million dollars.

The Master: I noticed a show of interest on Mr. Harris's part.

Mr. Harris: You did, indeed!

(Discussion off the record.)

Mr. Thiess: I might say, Your Honor, I believe that the two reported cases will show Mr. Reed's position as to this additional amount of money.

Mr. Harris: Well, the whole point, Mr. White, is just that we regarded ourselves as being held up, we paid something far in excess of what we thought we owed the Senator. We had not recovered from the 5528
shock of it when this other fellow came along, and we just didn't want to have four or five more years of litigation for the relatively small amount we expected to use him. That is the position we will take. For that reason I don't think we need to go into all these details of the number of hours and days he spent on it. We don't deny that he was present in court and participated, and we don't claim that he was in the same position that Mr. Kaufman was, who performed substantially no services in the Root case. It is largely a matter of the effect on us, don't you know, of having gone through that litigation.

Mr. Thiess: I would like to suggest that this state- 5529
ment that Mr. Harris has made of record, what has just happened, be written up, and we can look at it and we can decide whether we can agree upon that.

The Master: Yes, I understand your purpose in making this offer was to show that Senator Reed performed substantial services and that he had a contract of some kind upon which he based a claim for a large fee, in that respect differing from Mr. Kaufman's situation. I think Mr. Harris has made that clear.

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get out a letter in which
Biggs' testimony we could
that have been recited, and

we have compiled such a letter, and then they are going to look it over, and, as I understand it, if they are satisfied, then the Biggs testimony was to be incorporated in this record with those dates inserted in brackets.

Mr. Harris: That is right.

Mr. Thiess: Is that correct?

Mr. Harris: That is right.

Mr. von Holst: And then the only other testimony for stipulation is Mr. Stewart's, as I understand it.

Mr. Harris: Well, I will have to discuss that.

5534

Mr. von Holst: Let us know on that.

Mr. Thiess: All right.

Mr. von Holst: I think that is all for this morning.

The Master: You have a witness coming at what hour?

Mr. von Holst: Two-thirty.

Mr. Harris: That will be a very short witness, won't it?

Mr. Thiess: Yes

The Master: That will conclude your case?

Mr. Thiess: That concludes our case as far as we see at the present time. We would like to get the copy of the record, and I understand that the record 5535
is going to be forthcoming pretty rapidly, and we would just like to have a chance to glance through the record, but as far as we see at the present time, I think that will conclude our case.

The Master: How about you, Mr. Harris, have you made up your mind what you are going to do?

Mr. Harris: We can't do that, Your Honor, until we have had a chance to study the record as a whole.

The Master: Yes.

Mr. Harris: It is very voluminous. Your Honor has been most liberal, don't you know, in your interpretation——

5536 *Mary Mahoney—For Amici Curiae—Direct.*

The Master: Yes.

Mr. Harris: —of your order, and we will have to give careful consideration as to whether any of these things which we regard as immaterial are of sufficient importance to require some testimony——

The Master: Yes.

Mr. Harris: —in explanation, or any answer.

The Master: Well, you have nothing now to offer?

Mr. Harris: I think of nothing at the present time.

The Master: I didn't know, that having called Mr. Hall here, that you meant to call him today.

5537 Mr. Harris: No, sir, we called Mr. Hall over only to be present if anything came up on Senator Reed.

(Discussion off the record.)

The Master: Well, then, we will adjourn until two-thirty.

(Recess, 12:30 until 2:30 o'clock P. M.)

AFTER RECESS

5538 Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae (Continued):

MARY MAHONEY, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. Please state your name and residence. A. Mary Mahoney, 117 Highland Avenue, Cynwyd, Pennsylvania.

Q. Where were you employed during the year 1936? A. For Robert Steedle, Referee in Bankruptcy, Atlantic City, New Jersey.

Q. What was your name then? A. Mary Richardson.

Q. You have since married? A. That is right.

Q. What was the nature of your employment in 1936 for Mr. Steedle? A. I was Mr. Steedle's secretary.

Q. Where was Mr. Steedle's office located in Atlantic City? A. 603 Schwemm Building, New York and Atlantic Avenues, Atlantic City.

Q. Was it on the main floor, on the street floor? A. Sixth.

Q. Sixth floor? A. 603.

Q. Where was your office with relation to Mr. Steedle's,— A. It was adjoining—

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Q. —or what was the layout? A. It was adjoining Mr. Steedle's private office; in other words, the two stenographers, or two secretaries, occupied the reception room and Mr. Steedle's office was adjoining the large reception room.

Q. Now, have you ever met Morgan S. Kaufman? A. I have never met Mr. Kaufman, but I have seen Mr. Kaufman in our office.

Q. When did you first see him in Mr. Steedle's office? A. In May of 1936.

Q. Do you remember about what time in May, that is, whether it was in the beginning or the end, or the middle of the month? A. It was in the beginning of the month.

Q. Will you describe the circumstances of your meeting 5541
Mr. Kaufman at this time? A. One morning, one Saturday morning, a Mr. Kaufman—so he introduced himself to me—came into the office and asked to see Mr. Steedle. I notified Mr. Steedle and ushered Mr. Kaufman in.

Q. Into Mr. Steedle's office? A. That is right.

Q. And was the door closed after Mr. Kaufman went in? A. Yes.

Q. About how long did Mr. Kaufman remain in? A. He stayed about an hour.

Q. You were not present at any time during that conversation? A. No.

Q. And you heard nothing that was said? A. No.

Q. Now, at the end of that time what happened? A. Mr. Steedle came out with Mr. Kaufman and took him to the outer door, and when he came back he said——

Mr. Harris: I object to what Mr. Steedle said.

The Witness: Pardon.

Mr. von Holst: Just a moment.

Mr. Harris: I object to what Mr. Steedle said.

Mr. von Holst: Now, I submit, if the Master please, that this follows in the same category with
5543 Alma Steedle's testimony which the Master admitted in evidence, a spontaneous statement as he was ushering Mr. Steedle out, as he closed the door——

The Master: Mr. Kaufman out.

Mr. von Holst: Mr. Kaufman out, pardon me.

Mr. Harris: Now, Your Honor——

Mr. von Holst: Pardon me—and turned and made an observation, and that that is a legitimate part of the res gestae of that first meeting, the main act being the visit of Kaufman to the Referee's office,——

Mr. Harris: Do you urge this with——

Mr. von Holst: —the *res gestae* comprising that visit and the characterization of it in the statement
5544 that Mr. Steedle made spontaneously, before any deliberation, and not as a conclusion, but just as an exclamation. It is a verbal fact, as competent to be proved in these proceedings as the fact of the visit.

Mr. Harris: Now, Your Honor, it would not only be hearsay if Mr. Steedle himself testified to it, but here is a man who is dead, and his secretary has heard him say something—why, that is the most remote conception of evidence that I ever listened to in my life. I don't even believe Mr. von Holst is serious about it.

Mr. von Holst: Mr. Harris, we would save time if you would concede that what I say here is seriously meant.

Mr. Harris: Well, I don't concede it for a moment. You are getting away with murder, and that is all, and you know it. At the proper time I will demonstrate it.

Mr. von Holst: I don't think the Master calls upon me to answer such remarks as that. I would like to call the Master's attention to some authorities here which I think support my point, if the Master thinks it necessary.

The Master: Well, I am quite familiar with the rule of res gestae. I think the real question is whether Mr. Steedle's reaction or state of mind to the visit 5546
of Mr. Kaufman was a relevant fact. I think that is the real question. I think it might well be held, Mr. Harris, that an exclamation, you might say, or a spontaneous remark made under those circumstances would be evidence of Mr. Steedle's state of mind. Now, is that a relevant fact?

Mr. Harris: Well, I don't know what Mr. Steedle's state of mind has to do with the case.

The Master: Well, that is the question.

Mr. von Holst: I think it is.

The Witness: Pardon me, may I speak?

Mr. von Holst: No, just a moment, please, Mr. 5547
Kaufman said, according to his testimony, that he came in——

The Master: Yes.

Mr. von Holst: —and asked for a volume of Collier's, and I think he also placed in that conversation some talk about a home for his sister, or something, and then went out.

The Witness: No, no, the luncheon engagement——

Mr. Harris: Just a minute.

5548 *Colloquy*

Mr. von Holst: I am just stating what Mr. Kaufman's testimony was. That is not questioned. If that were the fact, then the remark that the witness is prepared to testify to would not be natural. If, on the other hand, it was of a different nature, then this remark which Steedle made characterizes the visit and the impression that was made upon Steedle's mind by the visit. I say that is just as material a fact as to whether this visit was a mere social visit or whether it was something quite different, as any other material fact in the case.

5549 Mr. Harris: I must say I don't see it.

The Master: If this remark indicated that the visit that Mr. Kaufman described were different from that when he described it to be, it might be evidence.

Mr. Harris: Oh, I don't think so, clearly not, because it would be offered as proof in contradiction of what Mr. Kaufman testified occurred, and that Mr. Steedle himself might contradict, but certainly no exclamation that he made which might have something to do, as you say, with his state of mind, if that were relevant, would tend to disprove what Kaufman said. Otherwise you are taking it out of the category of

5550 what the state of his mind was and using hearsay evidence to disprove the direct testimony of another witness.

Mr. von Holst: But the statement which Mr. Steedle made as a fact in this case, a verbal act, may be weighed by the Master in connection with the statements that Kaufman made.

Mr. Harris: No.

Mr. von Holst: That is the very purpose of res gestae statements in any case.

Mr. Harris: It is not offered for the purposes of showing state of mind at all, it is offered to disprove what Kaufman said.

Mr. von Holst: No, it is offered on my part for the sake of showing the spontaneous, verbal act of the witness, Steedle, which has its bearing in the case, and upon which, taking that into consideration, the Master is entitled to consider that fact as well as the testimony which Kaufman gave as to the nature of his visit.

Mr. Harris: Not unless it contradicts—if Mr. von Holst is not offering it to contradict Mr. Kaufman's testimony, then I withdraw my objection.

Mr. von Holst: No, Your Honor, I have made my point plain. It does not say as a statement of fact, 5552
anything which is contrary to what Kaufman said, but it is competent to show whether—or, rather competent upon the point that in view of that remark, is the Master to give credibility to what Kaufman said?

Mr. Harris: Well, that is used for the purpose of impeaching his testimony.

Mr. Von Holst: No, I think there is a distinction in all these res gestae cases.

The Master: I think it comes within the same category as the statement which we did receive,——

Mr. Harris: I think it does. I think you were equally in error there, Your Honor. 5553

The Master: —the remark which Mr. Steedle made when he hung up the telephone on another occasion. I admitted it then, and I think I will admit it now. I will reserve the question for ultimate decision as to whether it is material.

Mr. Harris: And will Your Honor——

The Master: Now that the witness is here, we will take the testimony.

Mr. Harris: —consider that I have on the record a motion to strike out both this and the other,——

The Master: Yes.

5554 *Mary Mahoney—For Amici Curiae—Cross*

Mr. Harris: —so that you will act on that motion in due course.

The Master: Yes.

By Mr. von Holst:

Q. Now, Mrs. Mahoney, will you state what Mr. Steedle said as he closed the door, as you have testified, behind Mr. Kaufman?

Mr. Harris: Now, just a moment, I want a little voir dire on this, if you don't mind.

5555 The Master: Go ahead.

(Direct examination suspended.)

Cross Examination by Mr. Harris:

Q. Mrs. Mahoney, you say that Mr. Steedle walked out of his private office with Mr. Kaufman—— A. That is right.

Q. —to the door? A. That is right.

Q. They were together? A. That is right.

Q. Chatting as they went along? A. Yes.

Q. And where did he leave Mr. Kaufman? A. At the door, at the outer door.

5556 Q. Was that in your office, or in the next office? A. No, in our office.

Q. So that you could see—— A. Mr. Kaufman leave.

Q. You could see Mr. Kaufman leave? A. That is right.

Q. And Mr. Steedle immediately closed the door after Mr. Kaufman? A. Right.

Q. And immediately made the remark that you are about to testify to? A. He came back and leaned against a large cabinet we have facing me, and I ——

Q. No, don't give us the testimony, what he said to you. A. All right.

Q. We are not ready for that. Mr. von Holst will ask that. And after he came back, he then made the remark—— A. That is right.

Q. —that you are about to testify to? A. Immediately.

Q. Without any introduction—— A. No.

Q. —to it, without your saying anything to him? A. That is right.

Q. And was he in the habit of making observations of that sort? A. He was.

Q. You mean whenever people came in, he would walk over to your desk and lean against the cabinet and give vent to one of these spontaneous—— A. No.—— 5558

Q. —exclamations? A. —I wouldn't say that.

Q. Well, this was unusual, then, wasn't it? A. Perhaps.

Q. Well, was it, or wasn't it? A. Depending upon—depending upon who the person might be that visited him.

Q. Well, he had done it before? A. Yes.

Q. Quite often? A. No.

Q. In what other case had he done it before? A. I couldn't say, specifically.

Q. Do you recall that he had ever done it before? A. Yes.

Q. Well, under what circumstances? A. I think you are trying to confuse me a bit there. 5559

Q. No, I am not. I think that you are—well, I withdraw the remark. I am not trying to confuse you, but you said that this was not an unusual proceeding, for him to come back after he had shown people to the door, and make a spontaneous exclamation—— A. No, you——

Q. —to you. A. —misunderstood me. It wasn't unusual for Mr. Steedle to make remarks to me about people who had visited him.

Q. I see. A. He was in the habit of doing that.

Q. But had he ever come back and made any such—I don't mean using the same language at all,—— A. Yes.

Q. —but made a spontaneous exclamation after showing anybody else to the door? A. I couldn't say that the experience had ever been repeated exactly.

Q. You think this was the first time he ever did that? A. That is right.

Q. And so far as you know, he never walked over and leaned against the cabinet, did you say? A. Oh, the stage was never set that way——

Q. He leaned against something, you say? A. That is right, the cabinet.

Q. This was the first time he had done that—— A.
5561 That is right.

Q. —when he had shown someone out? A That is right.

Q. And there was no prior conversation between you? A. No.

Q. And how many seconds, if you can guess, I mean, just estimate, elapsed between the time he closed the door and the time he made this remark to you? A. Well, just long enough for him to walk from the door to the cabinet.

Q. Just a few seconds? A. That is right.

Q. Was there anyone else in the room at the time? A. No.

Q. So the other secretary wasn't there? A. No.

5562 Q. Was this the room that was used as a court room, also? A. No.

Q. Did he use his private office as a court room? A. No.

Q. There was still another room for that purpose? A. That is right.

Q. And he and Mr. Kaufman—— A. It was on another floor, for this particular—for the Fox bankruptcy, there had been special court room chambers provided.

Q. Well, of course, the Fox bankruptcy hadn't occurred at the time you are talking about,—— A. No, that is correct.

Q. —had it? A. But any large bankruptcy, I would say.

Q. Had he had other large bankruptcies? A. He did.

Q. And he hired a hall for that? A. A special room.

Q. When were you first asked by anyone about this spontaneous exclamation? A. At this particular court room——

Q. In this particular—— A. —is the first time I have ever been asked to specify what the remark was.

Q. Did you testify in either of the criminal trials against Mr. Kaufman—— A. I wasn't——

Q. —and Judge Davis? A. I wasn't permitted to.

Q. You tried to give the same testimony, didn't you? 5564
A. I did.

Q. And the Court excluded it, didn't it?

Mr. von Holst: Can I correct the record there?

Mr. Harris: No, I——

Mr. von Holst: I know, but she didn't testify in the criminal trial. You are thinking of the Masters proceedings. You will confuse the witness.

Mr. Harris: I am not trying to confuse the witness.

The Witness: I wish to correct myself.

By Mr. Harris: 5565

Q. Did you testify in the United States District Court in the criminal trial of Judge Davis and Mr. Kaufman? Of course, Mr. von Holst has now corrected you,—— A. Yes.

Q. —but I assume you will disregard that and search your own recollection on the subject. A. That is right.

Q. Did you? A. Did I testify as to this particular remark?

Q. Did you testify at all? A. Yes, I did.

Q. And did you testify as to this remark in either criminal trial? A. I tried to.

Q. And it was excluded? A. That is correct.

Q. Now, did you testify before the three Masters in the disciplinary proceeding? A. That is the proceedings of which I am speaking.

Q. Oh, I see, you didn't testify in the United States District Court—— A. I was subpoenaed but I couldn't come.

Q. —before a Judge and a jury at all? A. No, I was subpoenaed but I couldn't come at that time.

Q. So, just to get it straight,—— A. Yes.

Q. —in neither of the criminal trials before a Judge and jury in the United States District Court for the Eastern District of Pennsylvania did you testify at all? A. Only
5567 because I couldn't come.

Q. Will you please—

Mr. Harris: I move to strike out "Only because——

The Witness: Well, they wanted me to come.

Mr. Harris: Just a minute, I don't care what they wanted you to do.

The Witness: Very well.

Mr. Harris: The District Judge would have excluded your testimony also.

The Master: That may be stricken out.

Mr. von Holst: And I move that Mr. Harris' remark, the District Judge would have excluded her
5568 testimony, be stricken out.

Mr. Harris: I am expressing an opinion.

Mr. von Holst: It isn't called for.

Mr. Harris: All right, I think it would, the three Masters did, I think the District Judge would. That is my judgment.

The Witness: There was the same squabble about it as there is with this, though.

By Mr. Harris:

Q. Did you testify before a Grand Jury? A. No.

Q. Who first talked to you about this, in connection with the trials before Judge and jury in the United States District Court? A. It was the attorney who represented the United States Government.

Q. Was it Mr. Gahagan, possibly? A. No, it was——

Q. Mr. Fulton? A. No.

Q. Mr. who? A. A man—his name began with "S".

By Mr. McCullough:

Q. Sullivan? A. That is it.

By Mr. Harris: 5570

Q. Mr. Sullivan? A. Correct.

Q. Where did he see you, at your home? A. No, at his office, just before the proceedings began.

Q. Were you under subpoena? A. No, not at that time.

Q. Did you give him a statement? A. I believe it was a special summons that I was given.

Q. Did you give him a statement? A. What do you mean?

Q. Did you make a statement to him? A. No, we merely discussed the circumstances of the diary.

Q. And did he ask you about this so-called spontaneous remark? A. He did.

Q. And did you tell him the same thing? A. I did. 5571

Q. Was it written down? A. Did he write it down??

Q. Did anyone write it down at that time? A. I don't believe so.

Q. Now, in the three-Masters proceedings,—— A. Yes.

Q. —that is the one where you say you testified? A. That is right.

Q. Who talked to you before that, before you testified there? A. Mr. Sullivan.

Q. The same man? A. Correct.

Q. And in connection with that did you make a written statement? A. To Mr. Sullivan?

Q. Yes. A. No.

Q. So that he simply carried your testimony in his head,—— A. That is correct.

Q. —so far as you know? A. That is right.

Q. He may have made some notes, do you know? A. I don't recall that he did at the time.

Q. Did he ask the question as to whether Mr. Steedle made this so-called spontaneous remark in that proceeding? A. No.

5573

Q. I thought you said you attempted to testify to it and the Judges, the Referees excluded it. A. So I did tell you that, I told you that I spoke with Mr. Sullivan of the circumstances surrounding this diary.

Q. Yes. A. And he tried to bring up this particular remark I had told him previously about, in his office.

Q. Yes. A. Just before the proceeding began.

Q. Well, now,—— A. And he tried to bring it up at that time.

Mr. Harris: Is this remark set forth in the three——

5574

Mr. von Holst: No; it isn't it was excluded.

Mr. Harris: I mean, is it set forth in a question.——

Mr. von Holst: No, sir.

Mr. Harris: —embodied in any question?

Mr. von Holst: No, sir.

Mr. Harris: So, so far as anybody knows, we don't know yet what the remark was?

Mr. von Holst: That is right.

Mr. Harris: And you don't know yourself?

Mr. von Holst: I do know myself, yes, certainly.

By Mr. Harris:

Q. When did you first talk to Mr. von Holst or anybody connected with his side about this? A. Just prior to the other meeting that was scheduled in this matter.

Q. Several weeks ago? A. Yes.

Q. Within the last several weeks? A. That is right.

Q. And did he tell you—what did he say to you? A. Well, I spoke with him the same way that I did with Mr. Sullivan, of the circumstances surrounding this diary.

Q. Well, I mean, they must have made some inquiry. You didn't seek them out to tell them about it, did you? 5576
They sought you out, didn't they? A. That is right.

Q. What did they say and what did you say? A. Well, I received a subpoena, to begin with,——

Q. Yes. A.—from Master White's office.

Q. Yes,—where did you learn the expression "Master White," by the way? A. Well, I worked in a law office.

Q. Did you ever hear that expression before, except from Mr. von Holst? A. Why, of course.

Q. All right, go ahead. A. Mr. Steedle had been a Special Master many times himself.

Q. All right, it is new to me, go ahead, it may be the practice over here. A. That is the proper——.

Q. Go ahead. A. Well, proceed. What did you want 5577
me to answer further?

Q. Just tell me what they said and what you said—what Mr. von Holst said and what you said. A. Well, I told you that Mr. von Holst asked me about the circumstances surrounding that diary and I told him of the fact that Mr. Steedle confided in me——.

Mr. Harris: I move to——

A. —as to these meetings——

5578 *Mary Mahoney—For Amici Curiae—Cross*

By Mr. Harris:

Q. All right, go ahead. Limit your remarks, now,—
A. I told him——

Q. —to what was said about this so-called spontaneous exclamation. A. I see. When—in rehearsing or going back over the specific events as they occurred he, I believe, did make notes as to what this remark was.

Q. How many times did you rehearse it? A. As many times as the diary had been brought up.

Q. I see, all right. A. Oh, I see what you are driving
5579 at.

Q. Oh, I am not driving at anything, I just used your remark, that you had rehearsed it.

By the Master:

Q. How far——

The Witness: I am a little nervous, you know.

Mr. Harris: Well, I am trying to make you comfortable.

The witness: I bet!

By the Master:

5580 Q. Well, Mrs. Mahoney, how far was it from the door where Mr. Kaufman left to your desk? A. I would say catercornered from this door to the picture over there (indicating).

Q. You think about fifteen feet? A. Yes, that is about the distance.

Q. And did Mr. Steedle walk directly over, immediately,—— A. Yes.

Q. —and make this remark? A. Yes.

Mr. Harris: I renew my objection.

Direct Examination by Mr. von Holst (Continued)

Q. Will you state what that remark was? A. Well, he with a chuckle, he said, "I wonder——

Mr. Harris: Now, just a minute, I move to strike out "with a chuckle".

The Witness: I think it is pertinent to the remark.

Mr. Harris: You are a very good lawyer, Mrs. Mahoney, but will you kindly refrain from trying this case?

The Witness: Well, I beg your pardon. 5582

Mr. von Holst: I think, as a matter of fact, if the man chuckled or if he frowned, or anything else, it is part of the circumstances. I don't press it, but I don't think there is anything improper.

Mr. Harris: You only asked what he said.

The Witness: All right, I will tell you the remark and then you will understand why he chuckled.

Mr. Harris: Well, we move to strike out your remark. Presently I am going to ask—you aren't so nervous that you don't have a motive here in coloring your testimony.

The Witness: I have no motive, I am sorry, sir. 5583

Mr. Harris: Well, I charge that.

The Witness: I have no interest in this case, sir. It is difficult for me to come down.

Mr. Harris: I don't think this would be allowed in a court.

The Master: Just tell, now, what he said, Mrs. Mahoney.

The Witness: "I wonder what that was all about. He is paving the way for something."

Mr. Harris: Well, I move to strike out the answer as certainly indicating no state of mind and having

no probative or other value so far as any testimony or issue in this case is concerned.

The Master: Is that all on that?

Mr. von Holst: That is all.

The Master: Well, I will reserve judgment on the motion.

By Mr. von Holst:

Q. Now, after this first time that Mr. Kaufman called at Mr. Steedle's office—— A. Yes.

5585 Q. —did he call again on another occasion that you remember? A. At the office or Mr. Steedle's home?

Q. Well, at the office, first. A. On one other occasion.

Q. Do you remember what that was? A. It was in the summer, during the proceedings of the Fox bankruptcy.

Q. Do you recall how long Mr. Kaufman stayed with Mr. Steedle the second time? A. That was a much shorter time, I don't remember just how long, but it was a much shorter time than the first visit.

Q. And you were not present while Mr. Kaufman and Mr. Steedle were together, either? A. I was not.

Q. They were in Mr. Steedle's office again, were they? A. Yes.

5586 Q. Now, were you ever at Mr. Steedle's home when Mr. Kaufman was there? A. No.

Q. During the time, during 1936 and up to the time of Mr. Steedle's death, did you ever answer the telephone and the person at the other end gave his name as Kaufman? A. No.

Q. And except for those two occasions that Mr. Kaufman called at Mr. Steedle's office were there any other occasions when he called at the office? A. Not to my knowledge.

Q. Now, I show you a document, Mrs. Mahoney, that has been marked Amici Exhibit 147 for Identification, and also an envelope marked Amici Exhibit 149 for Identification,

and ask you whether you ever saw this document, Amici Exhibit 147 for Identification, before.

(The witness examined the document.)

A. Yes, I have seen it before.

By Mr. von Holst:

Q. Now, when was the last time while Referee Steedle was alive that you saw this document? A. While he was alive?

Q. Yes. A. Right after the last visit with Judge Davis. 5588

Q. When was that, do you know? A. It was just before Thanksgiving of 1936.

Q. And in what form was the document at that time? Was it in its present form? Examine it.

(The witness examined the document.)

A. Yes, it was.

By Mr. von Holst:

Q. Now, where was this document kept, if you know, during Mr. Steedle's lifetime? A. It was kept in a strong box of our cabinet. 5589

Q. In Mr. Steedle's office. A. No, my office.

Q. In your office? A. That is right.

Q. And was it kept under lock and key? A. It was.

Q. And who had the keys to that strong box? A. Mr. Steedle had one key and I had the other.

Q. Now, after Mr. Steedle's death did you do anything with this document? A. I handed this document to Hiram Steelman, an attorney in Atlantic City and a personal friend of Mr. Steedle's.

Q. Now, going back to the summer of 1936, did Mr. Steedle show you any other writings? A. What do you mean?

Q. Well,—— A. Pertinent to this diary?
Q. Yes. A. Yes, yellow sheets.

By Mr. Harris:

Q. Excuse me, do you call this a diary? A. Yes.
Q. All right, is this the only diary that Mr. Steedle kept? A. That is right.

By Mr. von Holst:

Q. And what were those other sheets? A. They were
5591 sheets on which he kept a record of these events as they occurred.

Mr. Harris: Now, Your Honor,——

By Mr. von Holst:

Q. Did he give you these——

Mr. Harris: Just a moment, I move to strike that out. What events are we talking about?

The Master: Well, ask the witness——

Mr. Harris: Well, I mean, how does she know what these events were? These events didn't take
5592 place in her presence.

The Master: Well, I think you might develop—suppose we strike that answer out, and you can develop the matter.

By Mr. von Holst:

Q. Did you read these yellow sheets from time to time as Mr. Steedle handed them to you? A. Yes, I did.

Mr. Harris: Well, just a moment, I don't know—I didn't understand that he had made any.

The Master: Well, ask her that.

The Witness: I answered to that effect.

Mr. Harris: But what yellow sheets were they?

Mr. von Holst: I suggest that something be left for cross examination.

Mr. Harris: Not at all, I am going to object to this strenuously as you go along. I am going to protest against his Honor letting this in in any event, but certainly without laying a proper legal foundation for it.

By Mr. von Holst: 5594

Q. In whose handwriting were those yellow sheets? A. Mr. Steedle's.

Q. Were you familiar with Mr. Steedle's handwriting? A. Yes, very well.

Q. You did not see these yellow sheets written, did you? A. No.

Q. But when you saw them you recognized his hand writing? A. Yes, he would show them to me in his presence.

Q. And did you read them? A. I would read them or he would read some—some portion of it to me. These notes weren't—perhaps this will clarify it—these notes weren't all read at the same time. I am trying to phrase this so it won't 5595
be confusing. Notes were kept of individual meetings, which are the same as you read in this diary.

Q. Let me ask you,——

Mr. Harris: I move to strike out the answer——

By Mr. von Holst:

Q. —as Mr. Steedle——

Mr. Harris: —unless the witness was present and knows what the events were.

5596 *Mary Mahoney—For Amici Curiae—Direct*

By the Master:

Q. Well, I understand you, Mrs. Mahoney, to say that Mr. Steedle showed you from time to time notes which he had written—— A. Correct.

Q. —relating to the matters which afterwards were incorporated in this paper before you? A. That is correct. In other words, this diary represents a series of meetings.

Mr. Harris: Now, I move——

A. (Continued) As those meetings—may I speak?

5597

Mr. Harris: No, I object——

Mr. von Holst: Just answer the question.

The Master: I will sustain that motion.

By the Master:

Q. What you know is that Mr. Steedle showed you what appear to be or purport to be reports written by him—— A. Yes.

Q. —of various meetings or events which are afterwards incorporated in this document before you? A. That is correct, which he afterwards typed into this particular document.

5598

Q. Did he do the typing, or did you? A. He did the typing.

Mr. Harris: Well, Your Honor, just a minute,——

By Mr. von Holst:

Q. You did not see him type this, did you? A. I did not. I saw him clip this together but I did not see him type it.

Q. You saw him put this circular clip—— A. That is right.

Q. —in this document, Amici Exhibit 147—— A. That is right.

Q. —for identification? Now, did you read, Mrs. Mahoney, did you read this document, Amici Exhibit 147—— and you have already testified that you read the yellow sheets; is that right? A. That is right.

Q. Did you read both of them? A. That is right.

Q. Now, can you state whether the subject matter that was on the yellow sheets is also on this document,—— A. Yes.

Q. —Amici Exhibit 147? A. It is the same. 5600

By the Master:

Q. Over how long a period were those memoranda made and shown to you? A. From May until—it was October or the first part of November of the same year, 1936.

Q. Did Mr. Steedle keep any other memoranda of a similar nature about other events? A. No.

Q. You know of no other records which he made with regard to incidents that happened during his official duties as Referee? A. No, not in this same manner.

By Mr. von-Holst:

Q. What, if you know, became of the yellow sheets? A. 5601
He destroyed those, in my presence.

Q. Now, referring to the envelope, Amici Exhibit 149, was this document, 147, kept in this envelope, 149? A. It was.

Q. Was the envelope sealed? A. I sealed the envelope.

Q. When? A. When I gave it to Mr. Steelman.

Q. That is, after Mr. Steedle's death? A. That is right. We kept it under a rubber band prior to that time.

Q. And when did Mr. Steedle die? A. May 12th of 1936.

Mr. Harris: 7?

By Mr. von Holst:

Q. 7? A. 7, excuse me.

Q. Now, to your knowledge, did Judge Davis ever call at Referee Steedle's office—— A. At his office?

Q. —in 1936? At his office. A. No.

Q. To your knowledge, that is to say, when you were there, did he ever call at Referee Steedle's home? A. When I was there?

Q. Yes. A. No.

Q. And to your knowledge did Judge Davis ever call
5603 Referee Steedle on the telephone at the office? A. Not to my knowledge.

Q. Now, Mr. Harris, on the other side, has asked you about the occasion when I called on you. A. Yes.

Q. Was there any rehearsing of a story that you were to tell here today? A. Oh, no.

Q. I just asked you questions and you just answered them, isn't that right? A. That is correct.

Q. And how long was I there? A. About twenty minutes.

Mr. Harris: I wish you would adopt that expedition in your examination.

5604 Mr. Thiess: We might if you didn't interrupt so much.

Mr. von Holst: That is all the direct.

Mr. Harris: Well, are you going to offer this in evidence?

Mr. von Holst: Do you want to cross, first?

Mr. Harris: I have no cross examination unless you are offering the document in evidence.

Mr. von Holst: Well, I am prepared to offer the document in evidence, but I have this to say about that, that we have prepared a memorandum in support of our motion that this document be received in evidence.

Mr. Harris: Well, that is all right.

Mr. von Holst: I am prepared to argue it orally this afternoon or to submit it on briefs, but I didn't think we wanted to detain the witness here during the course of that argument.

Mr. Harris: You can just make your offer and then I will cross examine on that, and we will reserve that.

The Master: Yes.

Mr. von Holst: Then I offer in evidence Amici Exhibit 147 for identification, as Amici Exhibit 147, and Amici Exhibit 149 for identification, as Amici Exhibit 149. 5606

Mr. Harris: May I see them?

Cross Examination (Continued) by Mr. Harris:

Q. Mrs. Mahoney,——

Mr. Harris: Preliminary cross examination on the introduction of this so-called document.

By Mr. Harris:

Q. —you say that you read the yellow slips that were written in Mr. Steedle's handwriting? A. I either read them or he read them to me, as the—— 5607

Q. And you remembered them very vividly? A. Yes.

Q. This was not completed until sometime in the fall of 1936? A. That is right.

Q. And at that time you recalled everything substantially that was in those yellow slips? Did you or did you not? A. I think I said that it had been transcribed partially to the white sheets, the yellow sheets.

Q. You didn't say that. A. Well, I wasn't asked specifically, then,——

Q. But you mean—— A. —but that is the way it was done.

5608 *Mary Mahoney—For Amici Curiae—Cross*

Q. —to say now this was written piecemeal? A. That is correct.

Q. How often was—how often was this Amici Exhibit 147 for Identification written on? A. I would say about three times.

Q. At what time, during what period? When was it first, when did he first typewrite? A. When he had about—when he had about four sheets of yellow——

Q. Well, how many times—— A. —paper written.

Q. Up to about what date would that carry you? A. Well, I wouldn't say that specifically, sir.

5609 Q. Well, I said about what date, approximately. A. There is—covering the first group of meetings, I would say, up until about the beginning of the summer.

Q. Well, that would be about the first of June? A. That is right.

Q. And then the next time—that would be covering about the months of May and June—the month of May? A. May and June, up to July.

Q. To the first of July, you would say? A. Yes.

Q. Then the second group—you said about three batches, did you? A. Yes.

Q. Now, the second group covered up to about what

5610 date? A. I can't say specifically, sir.

Q. Well, approximately? A. I am not sure.

Q. Have you any idea? Well, now, as a matter of fact, do you remember whether there were more than two batches or not? A. What?

Q. May there have been more than two batches? A. Of the yellow sheets——

Q. Yes. A. There were three.

Q. No, no, I don't mean that, I mean, how many times did he transcribe from—— A. He transcribed three times.

Q. You are sure of that? A. Yes.

Q. The first time he transcribed was around the first of July? A. That is right.

Q. And the second time around when? A. I can't say specifically.

Q. Well, approximately, can't you? A. I don't—I can't specifically——

Q. Well, you read these at the time, didn't you? A. Yes, I read them.

Q. And you read the transcriptions at the time, didn't you? A. That is correct. That has been six years ago.

Q. I see, so that your recollection now isn't very clear on it, except that you—— A. Yes, the recollection is clear but the particular question, I don't know those dates, I don't 5612
have those dates exactly in my mind. You have the diary before you.

Q. Well, did you have it exactly in your mind at the time he transcribed them? A. At the time he transcribed them, of course.

Q. Well, now, let's see—— A. They were pertinent to my life at that time.

Q. All right, now, let's see, the first one, two, three, four, five—four and three-quarter pages deal with the period prior to July. Now, will you tell me, if you can, where he broke off on this document, where he broke off with the first transcription? A. It was right after the Fox bankruptcy had been received in our office. 5613

Q. Well, just find it there and show it to me physically on the document.

(The witness examined the document.)

A. Right in here (indicating).

By Mr. Harris:

Q. That is, at the beginning of the second full paragraph on the fourth page, is that right? A. It is at the end——

Q. The beginning—— A. The beginning of that second fishing—wait a minute—the second meeting with Judge Davis.

Q. At the end of the first full paragraph on the first page? A. That is right.

Q. That is, the first full paragraph on the fourth page? A. Very well, sir.

Q. Is that right? A. That is correct.

Q. The words ending that paragraph are: agreed to do so—period, close quote. A. That is correct.

Q. And you say that he came in and handed you four sheets of paper, these first four sheets of paper—— A. Yes.

Q. —with that much typewritten on the document, at that time? A. That is correct, under a clip.

5615

Q. All right, now, will you show me where the next one ended—and you say that was about the first of July, that he typewrote that? A. That is right.

Q. All right.

(The witness examined the document.)

The Witness: This, here (indicating).

By Mr. Harris:

Q. At the end of the incomplete paragraph on the top of the sixth page, is that right?

(The witness examined the document.)

5616

A. That is right.

By Mr. Harris:

Q. The language of that paragraph ending as follows: working on the hearing of the claims—period, close quote? A. That is right.

Q. And about when was that transcribed? A. It was around the first part of August.

Q. And the remainder of it was transcribed at a third —— A. That is right.

Q. —time, which was sometime, you say, in late October or November? A. That is right.

Q. Now, these sheets that are marked as Amici Exhibit 147 for Identification are the very sheets on which he wrote? A. That is right.

Q. Can you tell me, does the typewriting look a little different on the fourth page and fifth page, where you say—the fourth page, where you say he commenced the second transcription?

(The witness examined the document.)

Mr. Harris: Beginning, quote, on June 30th. 5618

The Witness: It is a little lighter.

By Mr. Harris:

Q. It looks a little lighter to you, all right. Now, how about the one of the next, where you say the next transcription starts? A. Well, I am remembering it as to event.

Q. I understand, but I am asking you now as an expert whether it looks different. A. Not much difference there.

Q. Is there any? A. Very little.

Q. And whoever put that document in the carriage of the machine—— A. Yes.

Q. —certainly got the margin lined up very accurately, 5619 didn't they? A. I always kept my margin at the same place,——

Mr. Harris: Strike that out——

A. —and he used my machine.

By Mr. Harris:

Q. Oh, he used your machine? A. Yes.

Q. I hadn't heard that before. A. Didn't ask me.

5620 *Mary Mahoney—For Amici Curiae—Cross*

Q. Can't expect you to tell Mr. von Holst anything that he didn't ask, but you are very generous——

Mr. von Holst: I ask——

By Mr. Harris:

Q. —but you are very generous when I am asking questions to volunteer.

Mr. von Holst: Just a moment, I asked Mrs. Mahoney whether she saw this instrument typed and
5621 she said that she did not.

Mr. Harris: That is right.

By Mr. Harris:

Q. Now, I understand it was typed on your machine? A. All right, I can give you a little information——

Q. Just a minute; did he? A. Yes.

Q. It wasn't typed in your presence? A. No, but any typing——

Q. Just a minute; do you know when it was typed? You therefore—— A. I knew the morning after it was typed, yes, sir.

5622 Q. Because he told you so? A. Correct.

Q. No other way? A. No other way,——

Mr. Harris: Now, I ask the Court to make a physical inspection of this page 4—— A. —other than my desk would be all awry and I would know that someone had been at it.

By Mr. Harris:

Q. Well, I am not asking about what you would know, I am asking about what you did know and what happened, not what—— A. That is what I am telling you.

Q. You said that is what "would be". A. I didn't say that.

Q. You said that "my desk would be all awry". A. Yes, sir, it was all awry.

Q. It was all awry? A. Yes.

Q. So you recall on those two occasions your desk was all awry? A. Yes, and that morning he told me he had done some typing.

Q. And those are the only two occasions when he ever did any typing? A. No.

Q. Was your desk always awry when he typed? A. Yes.

5624

Q. And did he do it frequently? A. He did, he liked to type.

Q. And you recall these specific instances particularly? A. Because he told me, too.

Q. Can you recall any other instances where your desk was all awry where he had done some typing in the Fox case? A. Not in the Fox case, no.

Q. This was the only time—— A. In the Fox case.

Q. —where he used your typewriter? A. In the Fox case, yes.

Q. This was the only occasion where he used your typewriter in the Fox case? A. To my knowledge.

Q. Well, you would know, you say, if your desk was awry,—— A. Yes

5625

Q. —but not otherwise? A. That is right.

Q. He never did any typing in your presence, of course? A. Not in this matter.

By the Master:

Q. Was there any typewriter in Mr. Steedle's office? A. No.

Mr. Harris: Now, did you notice both places, Your Honor? Did you notice the other one?

The Master: I was looking on the fourth page, first.

Mr. Harris: You see, it is lined up precisely under the other one, and the other one, the sixth page, beginning after the quote, beginning after this quote (indicating).

The Witness. As a stenographer, that is very possible.

By Mr. Harris:

5627 Q. Now, Mrs. Mahoney, at the time, when did you read this first, as it was written? A. As it was—as the individual events occurred.

Q. I am talking about this finished document,—— A. The completed document,——

Q. —Amici Exhibit—— A. —or those first four pages?

Q. The first four pages, the first batch that was typewritten on the typewriter. A. After they were transcribed?

Q. Yes. A. After they were transcribed from the yellow sheets?

Q. That is right, you read them immediately? A. I didn't proofread them at that time.

Q. You didn't proofread them? A. No.

5628 Q. Did you ever proofread them? A. Not verbatim, no.

Q. So that you depended on your recollection of what was on the yellow sheets? A. I knew that the——

Q. Just answer my questions, please. We would get along a lot faster. A. I am trying to.

Q. All right, you just recall—and please don't, don't make faces at me. I am trying to be serious.

Mr. von Holst: Oh, I object to that.

The Witness: I am too, sir.

Mr. von Holst: I don't think there is any call——

Mr. Harris: I am trying to be just as serious as I can.

Mr. von Holst: —for the witness to be harrassed in that manner.

Mr. Harris: I am not harrassing. She is obviously antagonistic.

Mr. von Holst: I object to that statement. I say she is not antagonistic.

The Witness: If I were antagonistic I wouldn't have come.

Mr. Harris: All I want Mrs. Mahoney to do is to respond to my questions. I am very sorry——

The Witness: I am trying to, sir, but you cut me off at the slightest moment, when I am trying to tell you. 5630

Mr. Harris: You volunteer things, Mrs. Mahoney.

The Witness: Then you say I give the other side more evidence than you.

Mr. Harris: Well, we were joking about that.

The Witness: Well, it is a joke, then, all the time.

The Master: Mr. Harris, I think you have stopped her once or twice. It is quite all right if you think she is saying something that is not responsive, and I will rule on it, but I think she is entitled to be given an opportunity to reply.

Mr. Harris: I am fully aware of that and I agree with that. I want, however, it to be understood that I am not examining this witness in any spirit of fun. I am getting no pleasure out of it. It is my duty to my client. 5631

The Master: I know.

Mr. Harris: I was never more serious in my life.

The Master: I understand that.

The Witness: Well, sir, it means nothing to me which side——

Mr. Harris: I don't think it does,——

The Witness: —wins here.

Mr. Harris: —except that——

The Witness: It really doesn't.

Mr. Harris: I am not——

The Witness: It is an inconvenience for me to come.

Mr. Harris: I am not here defending Judge Davis. I am not here defending Mr. Kaufman, I don't know either of those gentlemen, I never saw them in my life until they appeared here. But I am here representing a company whose property is being attacked.

5633 The Witness: Well, my only interest in coming here is to try to give you the circumstances of information that Mr. Steedle left that he felt was pertinent.

Mr. Harris: I move to strike out——

The Witness: My only reason for being here.

Mr. Harris: —what he felt was pertinent.

The Master: I will strike that out.

Mr. Harris: I don't think Mr. Steedle knew——

By Mr. Harris:

Q. Did you ever hear of the Universal Oil Products Company? A. I never heard of them. In fact, I called Master
5634 White and questioned whether I was the correct witness to come.

Q. So, so far as you know, Mr. Steedle never heard of the Universal Oil Products Company, isn't that right? A. That is correct.

Q. So that Mr. Steedle certainly had no feeling one way or another so far as my client is concerned? A. Except that he felt these events were important. That is the only reason he kept a record of them.

The Master: Well, there has been no suggestion whatever that your client was ever mentioned or had anything to do with these particular events. I think this all relates to the Fox bankruptcy transaction.

By Mr. Harris:

Q. Now, getting back—Mrs. Mahoney, forgive me if I have upset you, but I am only trying to do my duty, and I am very serious, and I am not trying to catch you, unless these questions have to catch you. If they do, I can't help it. A. You can't catch me on something here, that is substantially there.

Q. All right. A. There is nothing to catch me on.

Q. Now, let's get back, let's try not to argue with each other, I will try not to argue with you, and you try not to argue with me, let's have questions that are responsive, if 5636
we may—now, I understand that at the time the first transcription was made, you said you did not proofread the yellow slips—— A. That is correct.

Q. —against the transcription. I asked you if you read the transcription. You don't recall whether you read it or had it read to you, is that right? A. That is correct.

Q. One or the other happened. At that time I asked you whether you were thoroughly familiar with the material that was contained in the yellow slips. A. Yes.

Q. And your recollection is that when you read the transcription, or Mr. Steedle read it to you,—— A. That is right.

Q. —that it was a hundred per cent accurate, verbatim
reproduction of what was on the yellow slips? A. That is 5637
correct.

Q. You haven't any doubt that it was one hundred per cent, and that is based not on confidence in Mr. Steedle, but on recollection that every word in the transcription was verbatim the same as every word on the yellow sheets? A. He told me he copied them.

Mr. Harris: I move to strike that out, Your Honor. I am asking for her recollection and not what he told her.

The Master: Well, I will strike that out.

By Mr. Harris:

Q. Will you please, Mrs. Mahoney, I am asking you now not for what he said, I am asking you for your own independent recollection of whether or not you knew, when he read the transcription to you, or you read the transcription to yourself, you knew at that time, not from what he said, but from your own knowledge, that this document as transcribed was a word-for-word verbatim transcription of what was on the yellow sheets. Can you honestly say that you knew that? Now, just say "yes" or "no". A. I can only
5639 answer the same way I did the last time, he told me so.

Q. All right. All right, Mrs. Mahoney, now, that is your answer, and that is really what you based your recollection on, is it not, that he told you so? A. My recollection of what?

Q. That this is a precise—— A. That is correct.

Q. It is only because he told you so? A. That is correct.

Mr. Harris: That is all.

The Witness: I had no reason to question it.

Redirect Examination by Mr. von Holst:

Q. Well, Mrs. Mahoney, may I ask one question? You
5640 may not remember that the exact word for word on the yellow sheets is on these typewritten sheets, but do you remember that, substantially, the substance of what was on the yellow sheets was transcribed—— A. Yes.

Q. —into the typewritten sheets?

Mr. Harris: Just a moment before she answers it. Finish your question. I want to object.

Mr. von Holst: Read the question.

(The question was repeated by the reporter as follows:

"Q. Well, Mrs. Mahoney, may I ask one question? You may not remember that the exact word for word on the yellow sheets is on these typewritten sheets, but do you remember that, substantially, the substance of what was on the yellow sheets was transcribed into the typewritten sheets?")

Mr. Harris: Before Mrs. Mahoney answers, I object to that, because the only theory on which this can be offered is that it is a contemporaneous memorandum. Now, if it is proved it was not a memoran- 5642
dum or an exact transcript of it, the rule does not apply. I ask leave to argue that.

The Master: I think the witness's statement is quite clear. She said, as I understood her, that Mr. Steedle had made memoranda at three occasions and that they had been copied on this document which was given to her to put away in a strong box, and that at that time she knew that the yellow sheet memorandum—if that may be so called—and this document substantially corresponded.

Mr. Harris: Well, I think it is because he told her so.

5643

By Mr. von Holst:

Q. Is that correct, Mrs. Mahoney? A. The yellow sheets were destroyed at the time that the transcription was made. Does that answer you.

Q. No, do you remember that substantially what was on the yellow sheets was transcribed onto the—— A. Yes.

Q. —typewritten sheets? A. Yes.

Q. Not word for word, I am not asking you that,—— A. Substantially.

Q. —but the substance of what was on the yellow sheets is also on the typewritten sheets? A. That is correct.

5644 *Mary Mahoney—For Amici Curiae—Recross*

Recross Examination by Mr. Harris:

Q. And you recall that at the time because Mr. Steedle told you so? A. I want to answer this without getting into a fuss with you.

Q. All right, that is only "yes" or "no", you don't need to—— A. I tried to tell you, sir, that as each event——

Mr. Harris: I move to strike out the answer. I just want you to say whether my statement was correct or not. If it is not, say "no".

Read the question, please.

5645 The Master: He wants to know whether you know——

The Witness: (Addressing Mr. Harris) Are you Mr. Harris?

The Master: He wants to know whether you know, Mrs. Mahoney,——

Mr. Harris: Now, just a minute, Your Honor, I am in the position of Sherman Whipple; if you ask that question on behalf of my client I withdraw the question. May the stenographer not read my question back? Then you can ask anything you want.

The Master: Very well, read Mr. Harris' question.

5646 (The question was repeated by the reporter as follows:

"Q. And you recall that at the time because Mr. Steedle told you so?")

Mr. Thiess: Well, you better read back a little further.

The Reporter: Do you want more read back, Mrs. Mahoney?

The Witness: No, I think I can answer.

Mr. Harris: Just "yes" or "no", please. I don't want anything but a "yes" or "no" answer.

Mr. von Holst: She can answer "yes" or "no" and then explain.

The Master: She can explain.

Mr. Harris: All right, I asked her——

The Witness: All right, yes, because at the same time he destroyed the yellow sheets.

Mr. Harris: All right, that is all right.

By Mr. von Holst:

Q. Well, Mrs. Mahoney, may I ask one question? Regardless of what Mr. Steedle told you, do you remember now that the substance of the yellow sheets corresponded to the substance of the typewritten sheets? A. Yes, I do. 5648

By Mr. Harris:

Q. And I again repeat the same question, because it is in response to the same question Mr. von Holst asked: That was because Mr.—the yellow sheets were destroyed and Mr. Steedle told you so, is that right?

Mr. von Holst: I put in my question,——

Mr. Harris: Just a minute,——

Mr. von Holst: ——regardless of what Mr. Steedle told her: 5649

Mr. Harris: That is right.

By Mr. Harris:

Q. And I say, your recollection is as you said before because the yellow sheets were destroyed and Mr. Steedle told you they were transcripts, is that right? A. Do you mean, had I read these white sheets?

Q. No, you said that Mr. Steedle either read them to you—— A. That is correct.

Q. ——or you read them yourself. You said that you couldn't say that they were verbatim transcripts of the yellow sheets? A. That is true.

Q. And then I asked you why you said you thought they were substantially the same, whether it was not because Mr. Steedle told you that they were, and you said, "Yes, that is all I could say about it." Now, I am just asking you if that answer still stands. A. Well, having read the yellow sheets and having also read this, I knew they were substantially the same, even though I hadn't compared them verbatim with the——

Q. I see, all right now, that necessitates further examination. How much did you recall at that time of the events which occurred before the transcription, before the first
5651 transcription?

Mr. von Holst: Just read that question again. I object to it.

Mr. Harris: All right. Well, we are talking about what her recollection was at the time.

Mr. von Holst: Not of the events.

Mr. Harris: We are talking about her recollection at that time.

Mr. von Holst: Of what was on the yellow sheets.

Mr. Harris: Certainly.

Mr. von Holst: Not of the events.

Mr. Harris: Well, I want to find out——

5652 Mr. von Holst: She is not claiming to have any personal knowledge of the events.

Mr. Harris: I want to find out—I am not asking that.

Mr. von Holst: That is the way the question was framed, if you read it.

Mr. Harris: No, it isn't.

The Master: I think the question was susceptible of that construction.

Mr. Harris: All right.

The Master: I think you better reframe it, Mr. Harris.

Mr. Harris: All right.

The Master: Strike it out.

By Mr. Harris:

Q. Now, at the time the first transcription was made, did you recall the events contained on the yellow sheets, which were then substantially, as you say, transcribed into this white document; did you then have a recollection, a definite, clear and unequivocal recollection, of what was in the yellow sheets? A. Yes, I did.

Q. You don't now, do you? A. Substantially. 5654

Q. You can still tell me substantially what occurred, what was transcribed in this document? A. Yes.

Q. Well, suppose you tell us what happened, in a general way, according to Mr. Steedle.

Mr. Harris: And this, Your Honor, is all part of the preliminary cross examination on the introduction. I am not offering this as testimony,——

Mr. von Holst: I object to that.

Mr. Harris: —but offering this on the question——

Mr. von Holst: I don't think that has any pertinency at all.

Mr. Harris: —of the admissibility of the document. 5655

Mr. von Holst: It is not a question of her recollection at all of what was in the document.

Mr. Harris: That goes to the question of credibility, Your Honor, that is all.

The Master: Well, of course, it is six years since it happened. She said, as I understood her, in the first place, and then afterwards again repeated, that she was familiar with what was in those yellow sheets,——

Mr. Harris: She says she is still familiar, substantially.

The Master: —and that she knew at the time that the substance of those yellow sheets was recorded in this document.

Mr. Harris: And she says she is still substantially acquainted with what is in that document. Now, this goes to the question of credibility.

The Master: Well, I don't think it would make very much difference whether she remembered all those events now or not.

Mr. Harris: But we might find out what she meant by "substantially".

5657 The Master: All right, you can ask her if you wish. I don't think it is very important.

By Mr. Harris:

Q. Now, how recently——

Mr. Harris: Well, Your Honor, if you have made up your mind on this——

The Master: No, I haven't made up my mind, but it seems to me——

The Witness: It is a long document.

The Master: —that the question that the witness is testifying to is not whether those events occurred,——

5658 Mr. Harris: Certainly not.

The Master: —but whether or not at the time when the yellow sheets were incorporated into this paper she knew they were substantially the same.

Mr. Harris: Well, haven't I a right to find out whether she is telling the truth or not?

The Master: Certainly.

Mr. Harris: That is all I am trying to do.

The Master: Certainly.

Mr. von Holst: Furthermore, the point is not the present recollection, but it is the recollection as of a time in 1936.

Mr. Harris: We are not going into that. We are trying to find out whether this witness is telling the truth or not.

The Master: Go ahead, Mr. Harris.

Mr. Harris: I think the witness is telling the truth when she said she thought they were the same because she believed her boss, who told her they were the same, and that would be the kind of loyalty that I would expect Mrs. Mahoney to have shown Judge Steedle.

The Witness: I also said I had read them.

Mr. Harris: I know that you had read them, but 5660
you didn't make this your business, I don't believe. Now, let's find out.

By Mr. Harris:

Q. You say that you still recall substantially what occurred? A. That is right.

Q. And how recently have you read this document, or a copy of it? A. Just prior to Mr. von Holst coming to my home.

Q. Now, Mrs. Mahoney, I want to ask you categorically whether you can now—and I just want a "yes" or "no" answer—conscientiously say that at the time this exhibit was 5661
transcribed you, independent of anything that Mr. Steedle may have said to you—were so convinced, I mean, had such a clear recollection of what was in the yellow sheets that you could say when Mr. Steedle read this diary, so-called diary to you, in instalments, or you read it yourself, that one was the same as the other.

Mr. von Holst: I suggest to the Master——

Mr. Harris: No, I want to ask her first whether she can say conscientiously that she knows that she

knew that at the time—and I, you see, I am relying on you, now, I am in your hands.

The Witness: I am trying to help you, too.

Mr. Harris: I know it. I want you just to tell me the honest, conscientious—your honest recollection and try to disassociate from your mind what you believed because of your loyalty to the man you worked for. Naturally, you would take his word for things, but put that out for a minute and tell me conscientiously whether you think you recalled those yellow sheets sufficiently to say that this at the time was
5663 an accurate transcript, not word for word, but pretty nearly that, because this word "substantially", you know, has gotten to where it has a pretty broad meaning.

The Master: I know, but——

The Witness: It means fundamentally.

By Mr. Harris:

Q. Well, I don't know what "fundamentally" means. I mean, did it mention dates? Did you recall dates, for instance, at that time? A. No, I don't recall—now, you mean at that time?

5664 Q. Could you at that time—did you at that time recall that the dates in the yellow sheets were the same as the dates in the transcription? A. The same answer.

Q. What is that? A. Mr. Steedle told me.

Q. Oh, yes. Can you now say that at that time——

By The Master:

Q. What was your answer?

Mr. Harris: That Mr. Steedle told her.

A. The same answer, that Mr. Steedle told me.

By Mr. Harris:

Q. Now, can you at this time say that you knew then that the names mentioned in the yellow sheets and the events mentioned in the yellow sheets were the same names and the same events—— A. Yes.

Q. —mentioned—— A. Yes.

Q. —in the transcription? A. Yes.

Q. But you can't recall the dates,—— A. Actual dates?

Q. —that the dates were the same? A. No.

Q. You had to depend on him for that. I am not talking 5666
about when the events occurred, I am talking about what was in one document and what was in the other. For instance, do you remember that the first yellow sheet dealt with May 2nd, 1936? A. Not May 2nd—May.

Q. Do you recall now that it dealt with May 2nd, 1936?

Mr. von Holst: She answered that question, if Your Honor please.

Mr. Harris: "Yes" or "no".

The Master: Well,——

The Witness: I said May, I said that before.

Mr. Harris: I move to strike out the answer. 5667

Mr. von Holst: Her answer was——

Mr. Harris: I am not asking whether she recalls it was May, I want to know whether she recalls it was May 2nd.

Mr. von Holst: And her answer was, "Not May 2nd, May". That was a complete answer, if the Master please.

The Witness: In my prior testimony I said first of May, first part of May.

5668 *Mary Mahoney—For Amici Curiae—Recross*

By Mr. Harris:

Q. You said the first part of May, I am not questioning that. You don't get the point. Now, if you will just try to answer my questions we will have no difficulty. You do not now recall that it was May 2nd, do you? A. No.

Q. Do you now recall that when you—that when you saw the transcription May 2nd was on the transcription? A. Yes.

Q. You recall that? A. Yes.

5669 Q. And you recall now that May 2nd was on the yellow sheet? A. Yes.

Q. You still recall that? A. Yes.

Q. And the second meeting, do you recall now that that was May 4th? A. No.

Q. Do you recall that on the yellow sheet it was May 4th? A. Not as to exact date, no.

Q. Do you recall that it May at all? A. Yes.

Q. All right. Now, on the third item, do you recall whether that was May? A. Yes.

Q. And do you recall whether it was May 29th? A. It was the last of May but I don't know the exact date.

5670 Q. Well, did you at that time know that it was May 29th? A. Yes.

Q. Did you know that it was on the yellow sheet, May 29th? A. No.

Q. All right. Now, the next one, do you recall whether the next event set forth in this agreement—in this memorandum was in the month of May, or the month of June or July? A. It was in the month of June.

Q. And do you recall about what part of June it was? A. First part of June.

Q. Do you recall whether it was May 30th or not? A. No.

Q. Do you recall whether the yellow sheet set forth May 30th, or not? A. No.

Q. And do you recall whether this transcript sets forth May 30th, or not? A. I remember the dates, as to the succession of events. As to actual dates, I can't answer you that.

Q. I am asking you whether you remember that at that time you knew those dates. A. At that time I knew the dates, yes. 5672

Q. And you knew—— A. Through their association——

Q. You knew that—— A. —one with another.

The Master: Let her finish, Mr. Harris.

By the Master:

Q. What were you saying? A. Through their association one with another.

By Mr. Harris:

Q. Yes, and did you know at that time that the same date appeared on the yellow sheet and on the transcription? 5673
A. Yes.

Q. And yet you didn't compare them? A. No.

Q. Now, isn't it a fact, Mrs. Mahoney, that actually you only—what you knew when you saw this transcription was that it covered what was in the yellow sheets in a general way? Isn't that the fact? Now, I ask you to honestly test your recollection. A. Well, the same answer, Mr. Steedle told me so.

Q. All right. A. He told me he copied it.

5674 *Colloquy*

Mr. von Holst: Are you through?

Mr. Harris: Yes.

Mr. von Holst: No further questions.

The Master: Well, now, you have something else to present, gentlemen?

Mr. von Holst: First of all, about the Steedle diary, does the Master wish to hear argument or shall we submit it on briefs and you reserve your decision; or what is the Master's wish?

5675

Mr. Harris: I haven't prepared—if you have prepared a memorandum I haven't done so yet.

The Master: I rather think, gentlemen, it would be better—it is an extremely doubtful point,——

Mr. Thiess: Yes.

The Master: —there is no question about that. I think it would be better if you would deal with it in your brief or in a separate memorandum, if you please, and then give Mr. Harris an opportunity to reply, so that we will get all the authorities which bear on the subject.

Mr. von Holst: If we do it that way, then we might

5676

just as well hold off and do as they did before the Master's hearings, and incorporate a passage in the brief on the subject.

Mr. Harris: There is only one difficulty with doing that. Obviously, if the brief is not in evidence there are many arguments you cannot make, and if it is in evidence there are many arguments both of us might want to make with respect to the content of it. You can't very well make a long argument weaving into that argument the contents of this brief, and have the Master say, "I rule it out," and then go back and write that point over. I think it is preliminary, and the

Master ought to determine that question before we write our briefs.

Mr. Thiess: Why not have us both file a brief contemporaneously on it?

Mr. Harris: No, the Master is right, let's see your memorandum and we will reply to it.

Mr. Thiess: All right.

Mr. von Holst: Does the Master wish to put a time limit on that? I think we ought to wind up somewhere.

The Master: Mr. Harris is not prepared to argue 5678
on it today, I understand.

Mr. Harris: No.

Mr. von Holst: I will give him a copy of our memorandum and hand this memorandum to the Master.

Mr. O'Mara: Have you an extra copy?

Mr. von Holst: Yes, I have.

The Master: I would like to get this along as rapidly as possible. How long a time would you want to reply, Mr. Harris?

Mr. Harris: You mean on this point? Oh, we will respond within a week, if that is satisfactory.

The Master: All right. I don't know whether I 5679
will rule within a week after that, or not.

Mr. Harris: No.

The Master: I will do my best. It is a very close point, and it is not to be assumed that it is settled by anything that has gone before, I think. I am not at all sure how I will look at it, but I will be very glad to read your memoranda carefully and see whether it seems to be admissible. Of course, I suppose your memorandum is based on what you assume the evidence will be.

5680 *Colloquy*

Mr. Thiess: Yes.

The Master: And you are satisfied that the evidence has come up to the memorandum, are you?

Mr. von Holst: Of course, this was written before Mary Mahoney's testimony was taken.

Mr. Harris: Well, do you want to take it back?

Mr. von Holst: No, I would suggest this, that the fundamentals are in that memorandum, and if Mr. Harris submits a memorandum and bases an attack upon the admissibility of Mary Mahoney's testimony,
5681 then if we could have a reply to that it would probably save time.

Mr. Harris: I think that you ought to take this back, Mr. White, I think Mr. von Holst ought to take this back and put anything in it that he thinks is covered by today's testimony. That won't be difficult. I don't like to shoot at something and then find that he brings up new evidence, and then I will have to ask for an opportunity to reply to that.

The Master: Does this entirely deal with the legal aspect of it, or do you deal with the evidential side of it?

5682 Mr. von Holst: We deal only with—we think that the materiality of the thing is unquestioned, we refer to Steelman's and Brown's testimony, both of which establish the manner in which it was kept, just as well as Mary Mahoney did, and for our part I want to make this plain, that as far as those yellow sheets are concerned, it is very evident that the Referee kept—and which has been introduced in evidence, what is it, 147?—Amici Exhibit 147 as his permanent record. Now, the fact that he jotted it down in pencil first to my mind has no relevancy at all, or materiality.

The Master: Except as bearing on the fact, perhaps, that it was done at different times, as this witness has said.

Mr. von Holst: Yes, but, if the Master please, the two statutes under which we make the presentation, under the first headings of our memorandum, say that they shall be made—the exact language I have forgotten, but it says at the time or within a reasonable time thereafter, and certainly if Steedle had not begun to make his record until the latter part of October, we say it would be within a reasonable time thereafter, 5684
because the acts which are recorded began in May and ended on October 4th, so it is immaterial to me whichever course the Master sees fit to adopt, but——

The Master: Well,——

Mr. von Holst: —I am perfectly willing to submit this now.

The Master: —you have this all prepared now. I suggest you take it, Mr. Harris, and reply to it.

Mr. Harris: If I find it involves Mary Mahoney's testimony, in my answer, I think I will write to you and ask you to make any argument you want on that and let me answer it, and then you can reply to it, 5685
because there is no use having four or five briefs here.

Mr. von Holst: I don't see any occasion for us to base any argument on Mary Mahoney's testimony.

Mr. Harris: You don't? You produced her.

Mr. von Holst: If he has any point that he makes against the admissibility, I would like to reply to that.

Mr. Harris: Just a minute. Mr. White, now, if I understand Mr. von Holst correctly, he says that he does not have to rely and does not rely on Mary Mahoney's testimony. That being the case, we shan't mention it, either.

5686 *Colloquy*

Mr. von Holst: That is not what I said.

Mr. Harris: What did you say?

Mr. von Holst: I said I see no occasion to refer to it. Of course, we rely on her testimony as corroborative of Mr. Steelman's and Mr. Brown's testimony.

Mr. Harris: Don't you refer to the testimony in this?

Mr. von Holst: What?

Mr. Harris: Don't you refer to the testimony in
5687 this?

Mr. von Holst: I refer to the testimony of Steelman and Brown.

Mr. Harris: Why not refer to all the testimony, then?

The Master: I don't think this matter is going to depend on a narrow examination of the testimony. It seems to me it is broader than that. Here is a document which is produced, which is referred to as a diary, which was written by Mr. Steedle, as evidence indicates, at three different times, probably based on similar memoranda, but I don't consider that point,
5688 perhaps, as absolutely essential. Now, the question is whether a record made in that way by a Referee in Bankruptcy, and left and found among his papers after his death, is admissible in evidence.

Mr. Thiess: That is right.

The Master: The fact that Mrs. Mahoney may have been a little confused as to this point or that does not seem to me to have very much bearing on the question.

Mr. von Holst: Well, that was my view on it.

Colloquy 5689

The Master: It is a fundamental question as to whether a memorandum of that kind is admissible in evidence after the writer is dead.

Mr. von Holst: That is right.

Mr. Harris: Of course, there are other points involved in Mrs. Mahoney's testimony. Personally, I don't believe, based on a physical examination, that it was typewritten in three instalments. I think it was gotten up at some later date. It has been handled by United States Attorneys, and in this case, and Grand Juries and Special Masters and counsel galore, 5690
and the thing is still so clean that it is very difficult to see, in my judgment, how it could have come down to us in this form. Now, I am not going to content myself with arguing the legal points.

The Master: Wasn't it Mr. Brown's testimony that it had been read to him at different times——

Mr. Thiess: Right.

The Master: —as it was written by Mr. Steedle?

Mr. von Holst: And read in final form in November of 1936. Mr. Brown so testified and Mr. Steedman so testified.

Mr. Harris: I don't recall testimony to that effect. 5691

Mr. Thiess: That is our understanding.

The Master: If you feel the evidence does not sufficiently sustain the proposition that this was written by Mr. Steedle in substantially this form, why, that is another proposition.

Mr. Harris: That, I take it that our brethren across the way have the burden of proving. They are tendering it in evidence and they have the burden of proving its authenticity.

The Master: That is true.

5692 *Colloquy*

Mr. Harris Well, if we can argue it out on a point of law I would prefer to do that.

The Master: Suppose we argue it on a point of law. I think by the time we get through arguing the legal points the other points may seem to be unimportant. If you think they are, you can make a special question of that.

Mr. Harris: All right.

The Master: Now, you have some other things to offer, then?

5693 Mr. Thiess: Yes, I have here this letter which Mr. McCullough asked us to write him on the dates—there is a copy for you, Mr. O'Mara, and here is a copy for Mr. White—and I have before me here the docket entries in these various cases from which we obtained those dates. Now, possibly you may want to borrow these from us.

Mr. McCullough: It would be very helpful, so we can check.

Mr. Thiess: I will turn those over to you.

The Master: Were all these dates omitted from Judge Biggs' testimony?

5694 Mr. Thiess: There weren't any dates. He referred to cases, you see.

The Master: Yes.

Mr. Thiess: And we went to the docket entries of the cases in order to supply the dates.

The Master: Yes.

Mr. Thiess: And Mr. McCullough had suggested that we compile a letter of this character so that they could investigate this from the docket entries and see whether it would be agreeable.

The Master: Well, when you comment on that you will refer to the dates as you may ultimately agree upon them?

Mr. Thiess: As the letter says, we will put them right in brackets.

Mr. Harris: Well, now, let's put that in evidence now subject to correction of the dates. That is agreeable to me.

Mr. von Holst: All right. Mr. Rodebaugh has it. It is in the three Masters proceedings.

Mr. Harris: Without in any wise conceding the relevancy or materiality, but on the contrary protesting vigorously that such evidence is in no wise applicable to our client, we concede that if the Honorable John Biggs were called as a witness he would testify as follows, the dates inserted in brackets in his testimony having been inserted by consent of counsel, and not appearing in the testimony of Judge Biggs, but it being recognized by all counsel that it may be assumed for the purpose of argument and briefs and findings and disposition of the matter that such dates were a part of Judge Biggs' testimony. 5696

(Discussion off the record.)

Mr. Harris: It was testimony before the Philadelphia Grand Jury. He can take it out of the other transcript. 5697

Mr. von Holst: That is right.

Mr. Harris: Actually, it was before the Philadelphia Federal Grand Jury. If we find any of these dates are inaccurate, or in question, we will let you know, or if we need additions we will let you know.

(A transcript of the stipulated testimony of the Honorable John Biggs, Jr., before the Federal Grand Jury, in Philadelphia, Pa., follows:

5698 *Hon. John Biggs, Jr.—For Amici Curiae—Direct*

HON. JOHN BIGGS, JR., having been duly sworn according to law, was examined and testified as follows:

Direct Examination by Mr. Fulton:

Q. Judge Biggs, I understand that you were appointed by the President and confirmed by the Senate as a member of the United States Circuit Court of Appeals? A. I was.

Q. For the Third Circuit? A. Yes.

Q. Can you tell me when? A. My commission was issued, following my confirmation on February 16, 1937 and
5699 I was sworn in, according to my best recollection on March 3, 1937; and from that time on I continued to sit as a member of the court with the three other members who were then active—Judge Woolley, the other member of the court, being inactive throughout the entire period.

Q. And who were those other three judges? A. Judge Buffington who was then senior circuit judge; Judge Davis was next in order of commission; finally Judge Thompson—Judge J. Whitaker Thompson.

Q. And how old a man is Judge Buffington today? A. Judge Buffington—I have to go through a calculation to remember that. He is either eighty-four or eighty-five today—I mean at this time.

5700 Q. He was appointed, I understand, by President Harrison to the District Court? A. He so informed me, and has told me that many times. As a matter of fact, I think he holds the oldest commission extant in the United States.

Q. And he is one of the oldest judges, and a man in what we term very advanced age? A. Yes, he is in a very advanced age.

Q. Would you tell us something of the way in which cases are ordinarily presented to the Circuit Court for decision? How do they get there? And what is done if they come before the court? A. The court is constituted generally by the senior circuit judge, who makes up a schedule

at the beginning of each term as to how the judges shall sit, and they sit in accordance with that schedule, which is kept privately among the judges, so that even the clerk will not know until shortly before the beginning of a week who the court will be.

Q. The court, when it sits, is a three-judge court, is it not? A. Yes, the court is a three-judge court.

Q. But there are more than three circuit judges? A. There are five circuit judges.

Q. For that reason you have to determine who will sit? A. That is correct. The personnel is altered to divide the 5702
work equally among the members of the court so each will do his own share and will not be burdened with doing more than his fair share; and upon a court being constituted for a particular week, or a particular period, the cases are argued before it, by counsel for the appellants and the appellees, and then following the argument, at some convenient time—generally in the following week—a conference day is had and the judges who sit in that case will discuss the case among themselves, and if they can at that time reach a conclusion—if they cannot reach a conclusion at that time, the case will be marked C. A. V.—*curia advisare vult*—the court desires to advise itself further—and there may be further argument in the court itself until finally some arrangement 5703
is arrived at whereby an opinion may be written representing a majority of two; and then if there is no dissent, or it appears that there will be no dissent, the senior circuit judge allots the opinions to one of the judges, including himself, so that the opinion may be written.

The opinion that is thus written is passed around—that is, it is mailed or delivered to the other members of the court, who will make suggestions—make suggested changes, perhaps—and if there is to be a dissent, the dissenting member of the court will prepare that dissent and pass that around. Then when everything has been done which seems

to be required to be done, the dissent and the opinion are filed at the same time.

Q. Then, I take it that if all three judges concur in a decision, the senior circuit judge allots one of the judges to write the opinion? A. That is correct.

Q. Which he does, and after conferring and sitting with the other judges to see that they all agree to the language that he has used, that opinion is filed? A. That is correct.

Q. If there is a dissent, there will be two opinions—a majority opinion representing the views of two judges, and the minority or dissenting opinion representing the dissent
5705 of the third judge? A. That is correct.

Q. When you were installed as a Circuit Court judge and had become a judge and were sitting on the court, were you given a testimonial dinner by certain lawyers? A. Yes; I cannot recall the exact date (September 18, 1937.) but I could look it up. But after I had gone on the bench and had served a little while, the president of the Delaware State Bar Association said that the bar would like to give a dinner in my honor, and a dinner was given at the Wilmington Country Club, and I attended that dinner.

Q. Was Judge Davis present? A. Judge Davis came down from Philadelphia and attended the dinner.

5706 Q. And after the dinner was over did you drive Judge Davis to the railroad station? A. I did. I had my car, and we left the country club about nine-fifteen, and he was going to take a train back to Trenton. He lived at Lawrenceville, and he was going back to Trenton so that he could be met there and go to Lawrenceville.

Q. Did you have any conversation with him as the train was about to come into the station—— A. Yes.

Q. —or pull out? A. Yes, as the train was about to go out of the station—I have forgotten the exact time of the train, but my recollection is it was about nine—five or nine-six, or some time in there—and the train was a rather long

one and the day coaches were at the head of the train, and the platform at Wilmington is rather a long one. We walked up to the end of the train—and I say the end—I mean approximately the end of the train—that is, the Philadelphia end—and Judge Davis stood on the steps. I had talked to him, of course, during the dinner. He sat at my left—no, he sat at Mr. Hidgley's left; and of course, I talked to him on the way in to the train about matters that were purely inconsequential; and as he stood on the steps of the train, he said, as well as I can recall his words, "Judge, if you have any cases in which friends of yours are interested, 5708
and will let me know, we will see if we cannot do something about them."

Q. And was anything else said, or did the train pull out? A. Absolutely nothing else was said. His remark frankly, shocked me profoundly, and I do not think anything more was said. I do not think even "Goodnight" was said. The train went out, and I was very much disturbed about that matter and one other matter which had come to light, and I thought it of such importance that I communicated with a member of the Department of Justice about it.

Q. And what was the other matter? A. Well, there were several other matters—the most important—the one that 5709
caused me the greatest concern was a case brought by the Secretary of the Treasury, Mr. Morgenthau—a proceeding before the Alcohol Tax Unit to cancel the license—the commercial alcohol license—of the Mifflin Alcohol Company—the Mifflin Chemical Company.

The Mifflin Chemical Company was accused by the Alcohol Tax Unit of using alcohol capable of being too quickly denatured, and which the Alcohol Tax Unit believe was going into channels—diverted into channels where it could be used for potable purposes—purposes of drinking.

And the Mifflin Chemical Company, after its license had been cancelled, brought a suit in the District Court of the

United States for the Eastern District of Pennsylvania—that is the court from which—one of the courts from which appeals come to our court—to compel the commissioner to issue it its license for that particular year. That case was heard by Judge Dickinson, and there was a very large record. It is my recollection—seven printed volumes, and was a very large record. Judge Dickinson decided that the license had been improperly withheld; and when I say this, nothing that I say is intended in anywise to reflect on Judge Dickinson. An appeal was then taken to the Circuit Court of Appeals. (Appeals Nos. 6362 and 6363.)

5711 Q. By the Government? A. By the Government. And after that appeal was taken, (February 9, 1937.) Judge Davis said to me that there was an appeal in some case—he was not quite sure of its name—but that he was under the impression that if had to do with cancelling an alcohol license, and that he thought the Department had acted very unjustly, and it was a case which should be borne in mind when it came before us. I paid no particular attention to it at the time. I might say, ladies and gentlemen, that when you go on the bench for the first time, you sort of have to learn your way around. I mean you do not feel at all at home.

5712 The case finally came on for hearing before the court, (June 1, 1937) which consisted of Judge Buffington, Judge Thompson, and myself. And the case was heard, and following the hearing there was a conference, and Judge Thompson and I took the view that Judge Dickinson should be reversed. Judge Buffington took the opposite view. And Judge Thompson assigned the opinion to me, as I recall it. I may be wrong about the details, but I know the opinion was assigned to me. And I spent a good deal of time preparing an opinion which reversed Judge Dickinson and refused—that is, upheld the attitude in the Alcohol Tax Unit in refusing to grant the permit. That opinion was filed,

(September 29, 1937) and an application—a petition for rehearing—was filed (November 8, 1937)—a petition for rehearing being a petition filed by counsel when they think the court has committed some sort of error—and in that petition for rehearing, they point out what they think the error is. In this particular instance, the petition for rehearing was denied. (December 11, 1937.). A short time after that—perhaps a week or ten days—I could not be absolutely sure as to the time, but some time later, Judge Buffington told me in chambers that counsel had been in to see him, and that he was not at all sure that an injustice had not been done. I might add that finally Judge Buffington came 5714
to the opinion which I had written and accepted it, as did Judge Thompson from the start—Judge Buffington requiring a good deal of persuasion, but finally accepting it—but accept it he did. He said he was not at all sure that injustice had not been done, and that he felt that there should be something resembling a rehearing.

Again I do not want to reflect on Judge Buffington, but the fact remains it is a little bit difficult to tell on the state of Judge Buffington's memory how much he remembered; and I was rather of the thought that perhaps he did not remember that a petition for rehearing had been filed and denied, and I pointed that out to him. He said he was aware 5715
that the petition for rehearing had been denied, but that he thought nonetheless that there might have been injustice, and therefore, he had set a time in which counsel were to appear and state the case again.

Q. Judge Biggs, was it a usual practice to have a second rehearing?. A. A very unusual practice. I know of only one other case in which it has been done. That was a patent case which was a very complicated and intricate one, and the business of granting a rehearing without consultation of the members of the court was perfectly extraordinary. I have never heard of anything of that sort being done. At

any rate, I was inclined to object, but I did not desire to embarrass him.

The next thing that occurred was—counsel came into court in the Mifflin case (December 22, 1937) and one of them stated he was not then prepared to argue the case because he wanted to go to California on a vacation and he desired a continuance of at least a month, which would have taken it over into the new year, which might have made—or which I was afraid would make—the situation such that since Judge Dickinson's order was still in effect, and our mandate—that is, our final order to the court below had not
5717 come down—that it probably would have the effect of validating the Mifflin Company's license for another year; therefore, I objected, and the case was thereupon (December 23, 1937) reheard completely. My recollection is it was between Christmas and New Year's. We actually—I insisted upon putting it in that period.

Nothing more was adduced than that which the court had had before it before, and Judge Thompson and I were firmly of the opinion that our decision was the correct one. Judge Buffington had the other view and held it very strongly. I endeavored to get rid of the thing—I mean get it out of the way. I did not think it ought to be there. And
5718 several times I urged him to come to a conclusion about it one way or the other—that is, Judge Buffington—to express his view finally one way or the other—and after I had pressed him rather hard about it one day—not to make him take my view, but to get him to expres his opinion definitely and conclusively—he told me that his friend David Kaufman was in the case, having been in it apparently for some time—Mr. Kaufman was not of record—and that he thought that Mr. Kaufman's physical condition was bad, and he thought that if he pressed him that it might kill him. Those were his exact words. He said "You may kill Davis," and he was very, very agitated about it.

The next thing that occurred was that I was having dinner at my mother-in-law's one evening in Wilmington and I received a telephone call from my former partner, Stuart Lynch, who is now United States District Attorney for the District of Delaware, and Mr. Lynch told me, to my considerable surprise, that someone in Philadelphia had attempted to retain him in that case to get another hearing.

Q. The third one? A. That would have been a third rehearing.

Q. And the fourth time the case would have been? A. Yes, the fourth time it would have been argued. Well, that 5720
frankly enraged me. I got very upset about it and I came up here to Philadelphia on Monday and I told Judge Buffington we would have to get that case out of the way then and there, and he agreed. While I was talking to him, and just after he had agreed, Judge Davis came into our chambers. At that time we were down in the old building, and there was not a great deal of room. Judge Buffington was rather agitated. I went out to the clerk's office—I have forgotten why—it was something quite immaterial; and when I came back, Judge Buffington had again changed his mind. He said that injustice had been done, and he did not know what he wanted to do, but he did not want the case decided that day. I insisted. I got hold of Judge Thompson, and Judge 5721
Thompson and I said we would file the opinion that day. And the opinion was filed. (January 25, 1938). That was the end of the matter.

Now, I do not know what Judge Davis said to him—I have no knowledge of that—but I do know that his attitude had changed in the three, four or five minutes that I was out of the room.

Q. Judge Biggs, was there any matter with respect to the Paramount Theatres Corporation case?—— (Appeal No. 6565.) A. Yes.

Q.—that came to your attention? A. I have forgotten the case, but it had to do with Paramount—a group of movie

5722 exhibitors in Philadelphia and throughout the Third Circuit, and, as a matter of fact, throughout the United States, had gotten into a fight with Paramount about their method of distributing pictures, and it was a very complicated case. It was a great big record. And Judge Buffington assigned it to himself. My view—we had a conference about it—my views were not quite in accord with those of Judge Buffington and Judge Davis, but they were not tremendously dissimilar, and Judge Buffington prepared to write an opinion. At least, I thought that he did. At least, he sent me an opinion, and I criticized it and sent it back to him, at the same time
5723 preparing an opinion which concurred in part and dissented in part. It concurred in that if agreed with some of the conclusions which the majority opinion expressed, but I did not quite like some of the phraseology, so I was concurring as to that, and as to some of it I did not agree at all, and I had a dissent in this opinion as to those particular portions, and there was a good deal of correspondence about it. It is my recollection it was somewheres around—I think it was fairly close to Christmas—somewheres around the beginning of December when this went on, but the case had been heard, I think in November, (October 6, 1937) and finally after a good many conferences had been had in which Judge Davis,
5724 Judge Buffington and myself had taken part, an opinion was prepared and filed by Judge Buffington, and in that one there was included my—enough of my concurring and dissenting opinions—to satisfy them, and the opinion was filed. (December 14, 1937). A little bit after that I expressed to Judge Buffington that I thought that really he had done a good job at writing an opinion. I don't mean to say that was—I said substantially that—that I thought it was a very well written opinion; and he said yes, that he thought Judge Davis had done a very good job of it.

Q. It was Judge Buffington's opinion, though, was it not?

A. Yes; he said that Judge Davis had done a very good job, and I asked him what it was, and it then appeared that Judge

Davis had written the opinion and Judge Buffington had not.

Q. It was filed by Judge Buffington? A. It was filed by Judge Buffington as his opinion, and my conferences on my concurring opinion and dissenting opinion had been with the two of them, and my best recollection—I am quite positive about it—is that I was under the impression that it was Judge Buffington's opinion, and I was quite surprised when I found that Judge Davis had written it. From that time on, I scrutinized the opinions with some care in that regard.

Q. Well, an opinion which is supposed—in that case was supposed to be—Judge Buffington's opinion, which is filed by him, actually would contain his signature, would it not? A. Well, we have followed various practices, Mr. Fulton. The customary thing is to write a letter to the clerk and sign that letter, saying, "Dear Mr. Rowland" or "Dear Sir—Enclosed you will find an original and two copies of an opinion in—such and such case." In any event, the opinions are not signed. 5726

Q. If, however, there is no letter, it is customary? A. If, for example, I complete an opinion in my chambers up here—you see, I have other chambers in Wilmington and am in Wilmington part of the time—it has been the practice usually—I am not familiar with what Judge Buffington did, but it has always been our custom for the person writing the opinion to sign the opinion, "Biggs", "Buffington" or "Maris" at the end of the opinion—not at the bottom, the way it is done in other districts. We follow the system of signing at the top. 5727

Now, in each case the judge who writes the opinion signs the order, but there is not the slightest doubt—whether Judge Buffington signed that opinion or not—that it was his opinion, or at least was represented to be his opinion.

Q. Judge Biggs, would you tell us your experience as a judge of the Circuit Court of Appeals whether there is a

practice, or whether it is considered a good or proper practice to have an opinion supposedly written and filed by one man, but actually written by a different judge entirely? A. I would say that it was completely unheard of to have an opinion written by one man and filed under the name of another judge. I have never heard of it being done except in this particular instance, though I think there were other instances growing out of the connection between Judge Buffington and Judge Davis. I have known of instances where to obtain a concurrence, a judge writing an opinion will insert language, phrases, words, paragraphs and some-
5729 times pages that another judge has written, but I have never heard of such a practice as filing an opinion written by one man in the name of another, and I would say it was highly improper.

Q. Well, did you have any case in which you had made special arrangements to learn when the majority opinion had been filed so that you could file a dissenting opinion. A. Yes.

Q. Would you tell us about that? A. Yes; that was the case of Commissioner vs. Kehoe (Appeal No. 6709). Mr. Fulton, it was a tax case in which an individual by the name of Kehoe, who had run an illegal distillery some place
5730 out on the other side of Pittsburgh had failed to pay the taxes due the United States, and he had been assessed a very large sum by the Commissioner of Internal Revenue and had taken an appeal to the Board of Tax Appeals. The Board of Tax Appeals sustained the Commissioner, and an appeal was taken to us. That case was heard (December 8, 1938) —it is my recollection—by Judge Buffington and by myself, and I have forgotten who the third judge was; but I found, to my surprise, that—I think it was Judge Davis—I am quite clear it was Judge Davis who was the third judge now, but you can check it. Yes; I am positive it was Judge Davis. Yes, it was Judge Davis.

Judge Buffington and Judge Davis, to my surprise, were in favor of reversing the Board of Tax Appeals, and I could see no possible legal justification in law or in fact for doing it; therefore, I prepared a dissent, and I sent the dissent to Judge Buffington. I had been having some difficulty, frankly, or thought I had been having some difficulty with the business of dissent. I had filed a good many of them, and I was never quite sure whether the majority opinion might not have some changes in it after the dissent had been made; and therefore, in this instance I sent the dissent to Mr. Rowland. 5732

Q. The clerk of the Third Circuit? A. The clerk of the court. I sent a copy to Judge Buffington, but I sent the dissent to Mr. Rowland, the clerk, and I told Mr. Rowland to hold that dissent and not to file it until Judge Buffington had filed his final opinion; because Judge Buffington would file an opinion and then deliver it to the clerk, and then take it back and then make some changes.

One Saturday morning I received word from Mr. Kelly, the deputy clerk—Mr. Rowland's assistant—that Judge Buffington had filed an opinion in the Kehoe case, and should he file the dissent? And I told him to read me Judge Buffington's opinion over the telephone—I was then in Wilmington—and he then proceeded to go into Mr. Rowland's 5733 private office and read me Judge Buffington's opinion on the phone. He had gotten about halfway through when Judge Buffington suddenly appeared and withdrew his opinion, and a period of about three weeks transpired and finally Judge Buffington did file an opinion (June 27, 1939) which, to my mind, was somewhat different from the original opinion or any of the opinions I had seen up to that time.

I had a great deal of doubt as to whether or not Judge Buffington had written the final opinion in the Kehoe case. I was rather inclined to put it in the same class as the Paramount opinion. I do not know that to be a fact, but——

Q. The judges sitting in the court get to know each other as to the style, the words, and phrases used? A. Yes; one can tell pretty nearly always, unless there might be some deliberate attempt to imitate style or phraseology. I think that I could come pretty close to telling who had written any opinion, of the four judges who sit with me in the Court of Appeals; and I think I can tell an opinion written by Judge Buffington, and I can come, I think—I mean one becomes familiar with style and phraseology—and not only that, ladies and gentlemen—point of view. We sometimes laugh a great deal about our respective points of view and
5735 how Judge X insists on getting in the restatement of laws and Judge Y always likes some statement of fact; and you get to know those things.

There have been other situations, but the Kehoe case, I think, was a rather clear example of peculiar circumstances.

By a Juror:

Q. Well, Judge, had Davis then copied Buffington's style when he wrote the opinion that you thought was Buffington's? A. No; no. I thought it was Judge Buffington's, but you can see, it was back—my recollection is it was some
5736 time in December, 1938 (December 14, 1337).

You mean the Paramount case now.

Q. Yes. A. Well, at that time I was not anywhere nearly as familiar as I became later, and it was the first time I had any idea that Judge Davis on occasions would write Judge Buffington's opinions. You see, at that time my attitude was not one of awareness that that might have been the case. That was the first time that I knew it had occurred. It might have occurred before—but, as I look at the Paramount opinion now—and I have read it several times since then—it is perfectly obvious to me that Judge Buffington did not write it. There are some characteristic phrases

which Judge Davis uses, and used the way he ordinarily did use them.

By Mr. Fulton:

Q. After the statute had been passed permitting judges over seventy years of age to retire but not resign, and thereafter to continue to receive full salary, and to be able to sit if assigned, did you and Judge Maris have any discussions with Judge Davis as to whether retired judges should sit on the court or should constitute a majority of the court? A. Yes, we did. Judge Maris was appointed to the Court 5738
of Appeals from the District—Eastern District of Pennsylvania—just after I was, and we felt—I felt when I was alone on the court—that there was a small chance in some cases of expressing a point of view which we felt should be expressed, and as soon as Judge Maris was appointed (June 24, 1938), Judge Maris, Judge Davis and I had a conference, and it was agreed by Judge Davis that at no time would he constitute a court of less than two active judges. In other words, he could sit with any one of the retired judges when he desired, so long as he had an active judge sitting with him, as well as with the retired judge; and when Judge Clark came in (June 25, 1938), which was
a very short time after Judge Maris came in, we had another 5739
conference and that was reiterated again, and Judge Davis faithfully promised to observe that rule.

Q. Did he follow that promise? A. He did not.

Q. Was there a case which was heard on a Saturday which would be in violation of the understanding? A. There was a case. My recollection is that it was the case of the National Labor Relations Board vs. the Republic Steel Company, and I found, to my surprise, that a court had been constituted of Judge Buffington, Judge Davis and Judge Thompson, and they had actually sat on a Saturday and had made an order in that case. That was the first time

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that I think our court had ever sat on Saturday. I know of no other instance in which it has. It certainly has not done so since I have been a member, and I do not believe it ever did before—or since.

Q. It must have been unusual to have a court sit on Saturday—that is, an appellate court, or, as a matter of fact, any other court does not ordinarily sit on Saturday. A. There were numerous instances where Judge Davis did not adhere to that rule or adhere to his promise.

Q. Judge Biggs, Mr. Brown, who was attorney for the trustee of William Fox, in bankruptcy, has testified here to-
5741 day concerning certain litigation which he referred to generally as the "Fox litigation." Are you familiar with the fact that there was such litigation and that it came before the Circuit Court? A. Yes; my recollection is that I sat pro forma—that is, in two formal matters in two of the cases—and it is my recollection some place on one of the Fox cases.

Q. Your action was, then, on formal and procedure matters? A. Yes, entirely. I have never sat in any case—any of the Fox cases—on merits—I mean anything relating to anything having to do with merits. It might be interesting to note that one rule that was very strongly adhered to by Judge Buffington and Judge Davis, and the members of the
5742 old court, was that whenever three judges—any particular three judges sat—in any phase of a case, they continued to sit throughout the entire litigation until it was disposed of.

In two of these Fox cases I sat with, I think Judge Davis and Judge Thompson, and we deferred some sort of motion until a consideration upon the merits, but when the case—cases were heard upon the merits—I did not sit. I did not know they were being heard.

Q. Would you ordinarily have sat under that rule? A. Ordinarily, under that rule I would have sat, but the cases were heard——

Q. Were you notified? A. No; I knew nothing about it until after I had read the opinions when they came out in printed form and were circulated on being filed. You see, as soon as an opinion is filed, it is printed, and as soon as it is printed it is sent to all circuit judges and to all district judges in the Third Circuit as well, so everybody will know what the last declaration of the law is; and I did not know that these cases had been heard until I received the printed opinion.

Q. And in that case the rule that it should be heard by the original judges who started it, had not been followed and you had not been notified as you should have been? 5744
A. That is the case. I might add that I have never believed in that particular rule, and it is one that the present court does not adhere to or follow. We do not care who hears a case—it is simply the court that happens to sit or to be sitting when the matter comes up—therefore, I said nothing about it, because it was in line with the procedure I wanted anyhow.

Q. The attorney for the trustee testified that in one of the cases that came to the Third Circuit Court of Appeals which involved an application of the trustee of William Fox in bankruptcy to have the papers and records of the All-Continent Corporation turned over—— A. Yes. 5745

Q. —to the trustee in bankruptcy—that the referee in bankruptcy and the District Court had ordered such papers to be turned over, but that—— A. Yes.

Q. —instead of turning over the papers, an appeal was taken to the Circuit Court, and pending the appeal there was a suit entered which would have the effect, so long as the Circuit Court had not determined its decision, of permitting the All-Continent Corporation to keep its papers and not to show them to the trustee? A. That would be the effect.

Q. Now, he testified that although the matter was appealed in October of 1936, and although he made several

applications to have the matter disposed of, it was not finally decided until March 31, 1938, and then only three days after he had applied to the United States Supreme Court for a writ of mandamus. A. Yes.

Q. Now, what can you tell us with respect to the practice of the Circuit Court as to a delay that long in a matter of that type? A. Well, a delay of that length, particularly in a bankruptcy case, where the statute requires by express terms, that bankruptcy cases shall be heard expeditiously, is perfectly extraordinary; and a delay of such a nature as that is certainly a denial of justice.

5747 Q. And at the same time there had been another proceeding which Mr. Brown testified to in which he said that the All-Continent Corporation desired to have adjudicated in the Federal District Court in Pennsylvania certain title questions with respect to assets which would be substantially the same as assets that were in dispute in the bankruptcy proceedings—he testified that an action had been instituted by the All-Continent Corporation in the Eastern District of Pennsylvania, and that Judge Avis in the District of New Jersey had concluded that the Pennsylvania action should not be prosecuted because of its possible conflict with the bankruptcy proceedings—— A. Yes.

5748 Q. —and the possible injustice to the creditors of having that done. A. Yes.

Q. Mr. Brown said that Judge Avis entered an order staying any proceedings in the Pennsylvania District Court and that order was appealed from and taken to the Circuit Court of Appeals, and that, of course, so long as that order had not actually been reversed it prevented the All-Continent Corporation from proceeding as it desired to proceed in Pennsylvania. A. That would be the effect.

Q. And that in that particular case, that appeal, although it was filed after the turn-over appeal in October, was heard in November—on November 13th—and was decided on De-

cember 1st or 2nd, a period of only a little more than two weeks after it had originally been argued. From your understanding of the practice of the court, can you reach any conclusion with respect to that? A. Well, the effect of the last order to which you have referred—that is, the appeal—the order following the decision of the appeal, of course, was to strip the bankruptcy court of jurisdiction so that it could scarcely proceed. That was the order which was entered on the decision which was made with reasonable promptness at the end of two months. The effect of the other order, of course, was to keep the books and papers out of hands of the trustee in bankruptcy and out of the bankruptcy court 5750
for a very long period, and the next result would be that the order which was promptly entered would be a great advantage to the Fox group and the other order would be equally to their advantage.

Q. To have a delay? A. To have a delay— each case. In the first case, a delay worked very advantageously; in the second case, the prompt disposition worked to equal advantage.

Q. Now, with respect to proceedings in those cases, Mr. Brown testified that he had not received the appeal transcript of record and he did not receive the brief of the appellant, but that, despite that fact he was ordered on three 5751
days' notice to proceed to argue the case before the Circuit Court. The question that I had there was this: the appeal had been advanced without any notice of motion of any kind for an advancement; and Mr. Brown concluded that that could not happen unless the court had itself directed that the appeal be advanced ahead of the other and earlier appeals. A. That would be absolutely the case. Now, to contrast the procedure and throw light on the situation, we have three lists. We have an A list—a list which embraces civil appeals solely; we have a B list which does not include criminal cases but does include all other cases, such as bank-

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ruptcy cases and other cases which are to be expedited by terms of some statute; and then lastly we have the regular list which includes all other cases. At the time that you speak of the court had no particular order in which they heard cases. The delays were often very long, and cases were not sorted out into categories—those requiring expedition and those which did not require it—and I would say that under the circumstances which you indicate, the only possible way in which an appeal would have been advanced was by some member of the court directing the clerk to advance it.

5753 Q. And then with respect to the failure of the appellant, the All-Continent Corporation, to file a transcript of record and to file its brief, could you tell me whether the rules of the Third Circuit require the appellant to file a record and brief before an appellee is compelled to file his brief and appear for argument on appeal? A. The rules of the Third Circuit Court of Appeals as they were then, and with one exception as they are now, require an appellant, of course, to file a printed record. Now there is a slight change in that—it is not necessary to go into it, it is a little technical. But the rules then required an appellant to file a record and file his brief, and after that record had been filed and

5754 after the appellant's brief had been filed, then the attorney for the appellee, or the appellee, prepared his brief and filed it, and then they had a rule whereby the appellant who was the moving party in the appeal could file a reply brief if he desired to.

Q. Would it be usual to require the appellee to appear and argue the appeal when the appellant had not filed a record and no brief? A. That would be most unusual, and unless there was some particular reason for it I cannot see why it would be done.

Q. Would it not be true that ordinarily an appellee would have to see the brief of his opponent before he would be

able to prepare his own brief, and would have to have the record before he could give the Court the citations of evidence and fact on which he relied? A. It would, absolutely. I might say—I think I had better add this in absolute fairness—in cases where the appellant delays, we sometimes, and recent times, have required him to appear on a certain day, make his argument, and at that time if the appellee is not ready, we have allowed the appellee to file his brief at a later time. Now, with that exception, which I do not think applies— I do not think would apply—to any of these particular cases to which you are referring, the rule is as you have stated it, and I can imagine no reason—no reason 5756
—why it should not have been observed.

Q. Now, with respect to state and federal jurisdiction, Judge Biggs, could you tell us whether the state court and the federal courts sometimes have concurrent jurisdiction? A. Oh, yes; very frequently.

Q. So, that a litigant may determine which of the two jurisdictions he is going to assert his rights in? A. Quite true.

Q. And a trustee in bankruptcy on cases involving alleged fraud against the creditors could sue in the state or federal court? A. He can sue either in what is known as ancillary proceedings to the bankruptcy proceeding in fed- 5757
eral court, or he can bring what is known as a plenary suit by coming into a state court as a party.

Q. In this case, Mr. Brown testified that the trustee chose to bring suit in the State of New Jersey, in the Chancery Court, and that that suit had not been instituted until after the decision of Judge Avis enjoining the All-Continent Corporation from continuing the Pennsylvania suit, and yet despite that fact and despite the fact it had not been before Judge Avis in any way, a record was inserted in the record on appeal stating the facts with respect to the institution of the New Jersey suit. A. It is my recollection that that

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record—the record of the New Jersey proceedings—the state court proceedings—was over seventy pages long. I recall it because I was rather astonished when I saw the decision of this court—in which a reference was made of a record which was not before Judge Avis and which had nothing to do with the case.

Q. Now, Judge Avis would be what is called the "court of original instance"? A. That is right; he would be the court of the first instance.

Q. And as such, he would be the one who would make his order and the Circuit Court jurisdiction would be simply to
5759 determine whether he had made a mistake or not? A. That is right. Except in admiralty cases, the Circuit Court of Appeals has no power whatsoever to receive evidence.

Q. And consequently could not receive or consider evidence which was not before the District Court. A. No; it would be absolutely improper for it to do so. It is without power to do so—any more than the Supreme Court of the United States could do it. It is function of the court below—the trial court,—the court of first instance—to hear the evidence and then make its conclusions as to the fact and the law. The function of the Court of Appeals is to decide whether or not the court below had properly declared the
5760 law and those facts, and we have no power whatsoever to receive testimony or evidence, except in admiralty cases; and, of course, in admiralty cases—even in admiralty cases—that power is so rarely exercised as to be practically non-existent.

Q. And admiralty, in effect, concerns matters involving waters? A. Waters, navigation, streams, maritime matters, maritime contracts, collisions between steamers at sea—has nothing to do with this.

Q. In case the Circuit Court of Appeals does conclude that other evidence might have been necessary, the regular procedure would have been to send the case back to the Dis-

trict Court to hear further evidence, would it not?. A. In those cases where we think the record is insufficient to do justice to the parties, we reverse and remand. To remand a case means to send it back with directions to determine the issues.

Q. Another case, Judge Biggs, seems to me to come close to that situation, and that is this, that Mr. Brown testified that after Mrs. Eva Fox was directed by the referee in bankruptcy to answer certain questions with respect to the transfer of assets and the possible fraud of creditors, that her attorneys insisted that she could not answer questions because her health was not sufficient to enable her to be 5762
examined, and the referee appointed a doctor who made an examination and a report that Mrs. Fox was in sufficient health to be examined; that the referee then ordered her to submit to an examination, which she refused to do, whereupon the referee cited her for contempt and Judge Avis, after examining the report of the doctor and the other facts and things before him, and hearing argument, held that she was in contempt. Now Mr. Brown testified then that that case was taken on appeal to the Circuit Court, and that instead of deciding the case on the record which had been before Judge Avis on or the doctor's certificate as to her health, the Circuit Court, many months after the time as of which she had 5763
been examined, and many months after the time as of which the District Court had entered its order, called for another examination by a doctor appointed by the Third Circuit, and after having that examination, held that she was not in contempt because the doctor's record showed or indicated that she was then, at least, of insufficient health in the opinion of that doctor to be examined—— A. Yes.

Q. Would that be a case in which the Circuit Court would not have power to hear further evidence? A. It would not only have not the power to receive any such evidence, or

any further evidence, but that was the most extraordinary bit of extra-judicial procedure that I have ever seen or encountered, or heard of.

Q. Because of the difference in dates? A. Well, first of all, it is my recollection—and I want you to bear in mind, ladies and gentlemen, that I noticed these things as they went along—it was my recollection there was over thirty months between the time in which the examination before the referee had taken place and the time that the Circuit Court of Appeals had ordered this extraordinary examination. That was one point.

5765 But the Court of Appeals is supposed—and must decide its cases on the record which the court below had; otherwise an appeal would be perfectly meaningless, because you would have a shifting base each time you got to the Court of Appeals. That is very extraordinary, and I never in all my life before have heard of a court of appeals bringing in a doctor to examine a witness who had been charged with contempt and found guilty of contempt in the court below. Never have I heard of it being done before. If this court had felt that the decision was merely unjust or something of that sort to Mrs. Fox in her alleged precarious condition of health, the court should have remanded it to the court

5766 below and let the court below have done it. It was extraordinary and unheard of—that course of conduct.

Q. Now, with reference, Judge Biggs, to the filing of an opinion—an opinion of a Circuit Court is made public when? A. It is made public after it is printed. The rule has been the same in our court for many years. After all of the judges have agreed on the opinion, or after the dissent or concurrence—if there is any separate concurrence—a concurrent opinion, ladies and gentlemen, is when you may reach the same result expressed by the judge who is writing the opinion but you do not agree with his reasoning—you reach the same result, but by a different course of reasoning. After

the opinion has been approved, if there is no dissent, or after it has been approved by two—if there is a dissent—and after the concurrence has been prepared, or the dissent has been prepared—in other words, after the whole thing is done and everyone has had on paper everything that he desires to have on paper, it is then delivered to the clerk for printing. It goes to the printer, and when it comes from the printer it is marked "filed" by the clerk on his docket, with the date, which is the date of the printing.

Q. Now, in cases other than this one, or other than these which we have been discussing, a decision of the court very 5768
frequently has a marked effect on the value of the stock in a corporation? A. Very, very frequently.

Q. And for that reason it is important, is it not, that no one should be given opportunity to have advance knowledge over the general public? A. It is not only customary but it is absolutely necessary, and the strictest secrecy has been and should be observed in relation to such matters.

To give you a concrete instance, in 1937 we had an appeal —the appeal of Madison Square Garden against Braddock (Appeal No. 6467 heard May 28, 1937). You will remember he was then heavyweight champion of the world, and it was so necessary to observe extraordinary precautions in that 5769
opinion that it was delivered by me to the clerk, who delivered it to the printer, who had a special typesetter set it up and watch it and lock it, because extraordinary efforts were being made at that time to try to discover what it was, because it made a great deal of difference, of course, to the sporting fraternity who undoubtedly had wagered money on what fight would come first, and what would happen.

Q. And therefore, in view of those strict provisions that are usually made to keep opinions secret until they have actually been filed when everyone may have an equal knowledge of the opinion, would it be unusual for any litigant to have any advance knowledge of the fact an opinion had been

5770 *Hon. John Biggs, Jr.—For Amici Curiae—Direct*

rendered in his favor?. A. It would not only be unusual but it would be perfectly scandalous.

Q. And it would be a matter of inquiry—— A. Immediately.

Q. —as to which person may or may not have revealed that knowledge or information? A. Immediately. It would be conduct which would be utterly unjudicial. It would be, I think, a contempt of the court, even if committed by a judge of the court; and, as I said before, to put it mildly, it would be a matter of public scandal.

5771 Mr. Fulton: Well, Judge Biggs, we greatly appreciate your coming down here, and unless the members of the Grand Jury have some questions, that is all that I have.

The Witness: I shall be glad to answer any questions I possibly can.

By a Juror:

Q. Who was the judge sitting in the court at the time the doctor was called? A. The court then consisted—the three judges that sat in that case were Judge Buffington, Judge Davis and Judge Thompson, according to my best recollection. You will recall my recollection is based on the
5772 fact that these opinions are circulated after they have been filed. Printed copies are sent to all the other judges. That is my recollection. I am quite sure that that was the case.

Mr. von Holst: A few loose ends, if the Master please; we asked you to obtain from the F.B.I. all documents which were taken by the Department of Justice or any officer of the Government from Davis, Kaufman or Stokley.

The Master: I have requested those and have received a reply by telephone that they would do their best to find them and send them to us.

Mr. Thiess: We will wait for that.

Mr. von Holst: We have asked Judge Davis for his correspondence for the six months' period ending May, 1935, as well as his conference notes on three cases, and his argument list, and we received a letter from him saying that he is trying to get that. We haven't yet received it.

Mr. Thiess: We are awaiting that.

The Master: I have received no conference notes other than those which have already been produced from him.

Mr. von Holst: And at page 2028-9 [R. 994] of 5774
the record in these proceedings Kaufman has stated that he would send a list of cases in which he participated in the Third Circuit Court of Appeals. On page 1948 [R. 954] he stated that he would send in any record showing that Stokley made payments to him in 1936.

Mr. Thiess: At the last session, Mr. McCullough, if I remember correctly, undertook to get this information.

Mr. McCullough: We haven't gotten it yet. We have asked for it.

The Master: You are attempting to get both those 5775
things.

Mr. von Holst: There are also some——

Mr. Thiess: —matters that the Clerk is going to get for us. I was over there this noon and he has not completed the work yet and he is going to get those for us as soon as possible. We are going to call him up after we get through with this session. We will have those available as soon as he finishes the search.

The Master: Well, anything of that kind in the way of official record, or what Mr. McCullough is producing, might just be sent to Mr. Rodebaugh and made part of the record, might they not?

Mr. Thiess: I think so.

5776 *Colloquy*

The Master: Without the necessity for another hearing.

Mr. Thiess: That is right. Then after we get the rest of the record and get this other material, then we would like to have an opportunity to look it over and then definitely close the record on our case, if it is right. If not, we can let the Master know whether we have anything else to present.

The Master: Very well. Meanwhile we will consider this question; and you will then consider whether you wish to offer anything, Mr. Harris.

5777 Mr. Harris: Yes. I will want perhaps some additional time. Off the record, Mr. Rodebaugh,——

(Discussion off the record.)

The Master: Have you anything further today?

Mr. Thiess: Nothing further today.

The Master: Then we will hear from you within a reasonable time, a week or so?

Mr. Harris: Yes.

The Master: Then if you think there is a question of any evidence to be discussed, then you may file a supplemental brief on that question and submit it to Mr. Harris.

5778 And let me say this, too, in connection with the main brief, while you are all here. Under the Pennsylvania practice, which I think is a very good one, the side that has the laboring oar usually requests the Court to make findings of fact and supports his requests by argument and references to the testimony. Then the other side can reply to that, and if he admits any of the requests, of course, that puts them right out of the case, and it narrows the issue.

Mr. Harris: I think that is very sensible.

Mr. Thiess: Do I gather under those circumstances the brief is written in the way of findings and then the arguments in support of it?

The Master: Yes, we usually do that over here, and then your argument on legal points.

Mr. Harris: In this particular case, where the record is so large, would it be contrary to your practice for them to submit in one document their proposed findings of fact and conclusions of law, and a brief supporting it?

The Master: That is all right.

Mr. Harris: That makes it a little easier to read.

The Master: That is the way we usually do it here.

Mr. Harris: We do that in New York, too.

5780

The Master: And then the judges usually make their own findings, they may rule directly on each request or they may not, or they may look upon them merely as suggestions, but at least it helps in the consideration of the case if we know which findings are not excepted to by the other side.

Mr. Harris: We will print the briefs, so it may aid the Court in reading them.

The Master: Yes.

Mr. Harris: A typewritten brief in a case of this sort would be terrible.

Mr. Thiess: We will print them.

Mr. Harris: Are there any special rules as to size of type and size of pages? We can look those up.

5781

The Master: There is nothing that would make any difference so far as I am concerned.

Mr. Harris: That we use a good, legible type,——

The Master: Yes.

(Discussion off the record.)

Mr. Harris: Do you object to footnotes,——

The Master: Not at all.

Mr. Harris: —appendices, compilations of that sort?

5782 *Colloquy*

Mr. Thiess: I think they would be very helpful.

Mr. Harris: I don't imagine you like italics.

(Discussion off the record.)

Mr. Thiess: I have always felt a brief where you do emphasize certain things, either in italics or bold faced, where you really have a point, it does bring out the point.

(Discussion off the record.)

Mr. Harris: Does Your Honor want to limit these
5783 briefs?

The Master: I think briefs can be shortened if you rely upon the points you really want to press home.

(Photostatic copy of certified copy of entries in the minute books of the United States Circuit Court of Appeals for the Third Circuit referring to the case of Hirsh, Newmann, Reass and Becker, Appellants, vs. Capital Company and George Frankenthaler, as Receiver etc., was marked Amici Exhibit 202.)

(Certified copy of certain data regarding specified cases in the United States Circuit Court of
5784 Appeals for the Third Circuit was marked Amici Exhibit 203.)

Transcript of Hearing, March 2, 1943 5785

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Tuesday, March 2nd, 1943, at 11 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, ESQ., Master.

THORLEY VON HOLST, ESQ., (77 West Washington Street, Chicago, Illinois) —
One of *Amici Curiae*: 5786

ROBERT W. POORE, ESQ., (77 West Washington Street, Chicago, Illinois)
Counsel accompanying *amici curiae*.

RALPH S. HARRIS, ESQ., (100 Broadway, New York, N. Y.);
EDWARD J. O'MARA, ESQ., (15 Exchange Place, Jersey City, New Jersey),

JOHN R. MCCULLOUGH, ESQ., (100 Broadway, New York, N. Y.)
representing Universal Oil Products Company.

Evidence on behalf of Amici Curiae (Continued) 5787

The Master: I have overruled the objection to the admission of the Steedle memorandum, which is therefore admitted, for the reasons stated in a memorandum opinion which has been filed, and of which copies have been sent to counsel.

(Steedle diary, previously marked Amici Exhibit 147 for identification, was marked Amici Exhibit 147.)

5788 *W. J. Rogers—For Amici Curiae—Direct*

W. J. ROGERS, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. Your name, Mr. Rogers? A. W. J. Rogers.

Q. Your residence? A. Tavares, Florida.

Q. What is your position? A. Cashier and vice-president of the Bank of Tavares.

Q. And how long have you been connected with the Bank of Tavares? A. Since 1918.

5789 Q. Were you served with a subpoena to bring certain documents before Master White at this hearing? A. Yes, sir.

Q. And have you brought those documents with you? A. Yes, sir.

Q. These documents being the bank statements, the monthly bank statements? A. The original bank statements, yes, sir.

Q. Of the account of Charles Lee Stokley? A. Yes, sir.

Q. In the Bank of Tavares? A. That is right.

By the Master:

5790 Q. Covering what period? A. From—this is from October 1st,——

By Mr. Harris:

Q. What year? A. '36, until May, '41.

Q. Was the account opened on an earlier date? A. No, it was opened on October 1st, 1936.

By Mr. von Holst:

Q. And does the account run through to that last date that you gave? A. Yes, sir.

Q. And is the account now active or closed? A. Well, it is closed; he has a small balance of five dollars, but it has been inactive since that date.

By the Master:

Q. Did Mr. Stokley never have an account until the first of October, '36? A. I don't recall that he did.

By Mr. von Holst:

Q. These statements comprise, Mr. Rogers, numbered pages from 1 to 15? A. 15. 5792

Q. Both inclusive? A. Inclusive, yes, sir.

Q. These are original records of the bank—— A. Yes, sir.

Q. —of Tavares? A. Yes, sir, we make two copies, one we mail our depositor at the end of each month, and these are our permanent records.

Mr. von Holst: We would like to offer in evidence these fifteen sheets, with leave to have photostats made, and the originals to be returned by mail to Mr. Rogers.——

By Mr. von Holst: 5793

Q. Will that be satisfactory with you—— A. That will be all right, yes.

Mr. von Holst: —at the Bank of Tavares.

The Master: They may be admitted.

Mr. Poore: Amici Exhibit 204.

Mr. Harris: May I ask a few questions?

The Master: Yes, sir.

Cross Examination by Mr. Harris:

Q. Did you personally keep these accounts, Mr. Rogers? A. No, sir, my bookkeepers.

Q. You didn't make any of the entries yourself? A. No, sir.

Q. Did Mr. Stokley have the sole authority to sign checks or did anyone else have authority? A. No, he had the sole authority.

Mr. Harris: Your Honor, I object to the introduction of the evidence as incompetent, irrelevant and immaterial, and as having no bearing on the issues.

The Master: I think they are admissible as far as competency is concerned, under the Federal rules. As
5795 to the relevancy, that perhaps may be developed later, and I will exclude any parts of them that do not appear to be relevant, when I come to consider the case. They may be received in evidence.

(Original bank statements, sheets 1 to 15, inclusive, of C. L. Stokley with the Bank of Tavares, from October 1, 1936, to May 29, 1941, were marked Amici Exhibit 204.)

Redirect Examination:

Mr. von Holst: I should like to ask the witness one more question.

5796

By Mr. von Holst:

Q. Who made deposits in this account, to your knowledge? A. Mr. Stokley.

Q. Did anyone else besides him? A. There was a lady lived at his home that made two or three or four deposits at various times, when he was away.

Q. What was her name? A. Miss Cole, I think.

Q. Do you know her first name? A. I do not, no, sir. She never had an account, but I understood that is how it was, she lived at Mr. Stokley's home and she brought the deposits over for Mr. Stokley.

W. J. Rogers—For Amici Curiae—Recross 5797
Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

Recross Examination by Mr. Harris:

Q. Mr. Rogers, were you a receiving teller in your bank? A. It is a small, country bank, and I do a little of everything.

Q. Did you receive the deposits? A. I do remember receiving—that is the reason I know—I do remember receiving one or two deposits by this lady.

Q. Do you remember receiving the other deposits? A. Mr. Stokley's? 5798

Q. Yes, sir. A. Yes, sir.

Q. Personally? A. Yes, sir. I probably took the majority of them. Mr. Stokley usually looked me up. He lived in another town.

Q. You don't remember that you received all of them? A. No, I am sure I didn't.

Q. And you don't remember which ones you did receive, do you? A. No, sir, I couldn't tell you.

Mr. von Holst: That is all, if the Master please.

The Master: Anything further? That is all, Mr. Rogers.

5799

CHARLES L. STOKLEY, recalled.

Redirect Examination by Mr. von Holst:

Q. Mr. Stokley, you are the same Charles Lee Stokley who has heretofore been sworn and testified before Master White in these proceedings? A. Yes, sir.

Mr. von Holst: Mr. Harris, I am about to interrogate the witness on the original letter of which you have a photostat, the letter addressed to Mrs. Eunice Cole.

Mr. Harris: It is in evidence, is it?

5800 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Mr. von Holst: No, sir, it is one of those Mr. Whit
furnished you a photostat of.

Mr. Harris: What is the date?

Mr. von Holst: December 19, 1940. It was fur
nished by Mr. Correa.

Mr. Harris: To Mrs. Cole?

The Master: Yes, it was furnished by Mr. Correa

Mr. von Holst: That is right.

Mr. Harris: December what?

Mr. von Holst: December 19, 1940.

5801

(Discussion off the record.)

By Mr. von Holst:

Q. Mr. Stokley, I show you an envelope addressed to Mrs
Eunice Cole, 911 Washington Avenue, Eustis, Florida, and
a letter consisting of three pages, dated December 19, 1940
and written on the stationery of the Whitney Hotel, a
Savannah, Georgia. I ask you if this letter and the envelop
are in your handwriting.

(The witness examined the letter.)

5802 A. It was, and I thought I had signed my name to it, sir.

By Mr. von Holst:

Q. Well, you will notice that it isn't signed. That is wh
I asked you the question. A. I just overlooked that. I in
tended to.

Q. That is your letter? A. Yes, sir.

Q. And you wrote it to Mrs. Cole? A. Yes, sir.

Q. And mailed it? A. Yes, sir.

Q. Now, Mr. Stokley, on the second page of this lette
there is reference to Judge D. Do you follow me? A. Yes
yes.

Q. That Judge D is Judge Davis, is it not? A. Yes, intended for.

Q. Now, referring back to the first page of the letter, let me ask you, first, this letter was written after the United States Department of Justice had begun an investigation—— A. Yes, sir.

Q. —into your affairs, is that right? A. Yes, that is correct.

Q. Now, you say on the first page of this letter—you will follow me as I read it—"I had—— 5804

Mr. Harris: Just one minute, please, Mr. von Holst. Isn't this a rather irregular way of examining the witness? The letter has not been identified. Are you going to offer——

Mr. von Holst: Would you prefer I offer it in evidence first? Is that your point?

Mr. Harris: No, I think you ought to mark it for identification first, so the record will show what you are talking about.

Mr. von Holst: I think the record so shows, but I have no objection. I propose to offer the letter in evidence, anyway, so I will offer it now as Amici Exhibit 205. 5805

Mr. Harris: You mean in evidence?

Mr. von Holst: In evidence. He has identified it.

The Master: He said it was his letter.

Mr. Harris: I understand. By identify, I mean give it a number, an exhibit number for identification.

The Master: Give it a number, yes.

Mr. von Holst: I thought we might as well offer it in evidence at this time. It is clearly relevant.

Mr. Harris: Well, I don't see the materiality of this. You are going to examine the witness about it. On what theory are you offering this letter? As an admission against interest?

Mr. von Holst: As being explanatory of certain transactions which occurred.

Mr. Harris: Can't the witness explain those things? I mean, he is here. It seems to me it is most improper. Unless it is an admission against interest, in what respect does it come under any exception to the hearsay rule, Your Honor?

The Master: This is a letter the witness himself wrote,——

5807 Mr. Harris: That is right.

The Master: —and he makes certain statements in it which refer to Judge Davis and to other matters which might have some bearing on this investigation.

Mr. Harris: It isn't evidence, and it certainly isn't binding on me, and I am sure if Judge Davis and Mr. Kaufman were represented by counsel you would hold it was not binding on them, the letter. It may be the testimony of this man would be binding, but the letter itself is nothing but a self-serving declaration.

Mr. von Holst: Well, let's mark it for identification and save further argument at this time.

5808 The Master: Very well, mark it for identification and examine him on it, and then we can consider the admission.

Mr. von Holst: That is as Amici Exhibit 205 for Identification.

(Letter and envelope, dated December 19, 1940, from C. L. Stokley to Mrs. Eunice Cole were marked Amici Exhibit 205 for Identification.)

By Mr. von Holst:

Q. Now, on the first page of this letter you referred to a life insurance policy for three thousand dollars with double indemnity and you say that that life insurance policy was

made to you—that would be to Mrs. Cole—and the girls for three thousand dollars and that you had carried it for five years, is that right?

Mr. Harris: And seven months.

By Mr. von Holst:

Q. Is that what the letter says, five years and seven months? A. Yes, but I was entirely wrong.

Q. Well,—— A. I hadn't——

Mr. Harris: I object to the question as to what the letter says. I think Mr. von Holst may ask the witness, read the letter, and ask the witness whether or not it is true. 5810

Mr. von Holst: I am just coming to that. I wanted to make sure that I have my rendition of the letter.

Mr. Harris: You are asking him to decipher the letter?

Mr. von Holst: Yes.

Mr. Harris: Oh, that is all right.

Mr. von Holst: It isn't very clear, you know.

Mr. Harris: I see, I beg your pardon. 5811

By Mr. von Holst:

Q. Now, then, did you have a life insurance policy for three thousand dollars with double indemnity made out to Mrs. Cole, Mrs. Eunice Cole? A. No, she wasn't the beneficiary. I was mistaken in my policy there. I have it with the Providence Mutual, and I went up to see them when I got in yesterday, to get the correct statement that I borrowed from them, and I have that to give you. I used it for fertilizer on the groves.

Q. You say you did have a policy, in what company? A. The Providence, of Philadelphia, Providence Mutual.

Q. And in what amount? A. It was four thousand.

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

Q. And did it carry double indemnity? A. I believe so, s, and I have also a loan on that policy just before this te.

Q. Well, now,—— A. May I just add this?

Q. Yes. A. This letter was just a family squabble, be- use she had misplaced these notes, and I had a serious ss on these notes here, and I was digging her every way at I could to get even with the unfair thing that she had ne to a fruit company and tried to claim that I owed the overnment income tax that I was evading.

y Mr. Harris:

Q. By "her", you mean Eunice Cole? A. Yes, sir.

Q. You say "her", do you mean Eunice Cole? A. Yes, nice Cole, this woman that worked for me, she used to llect notes for me, and bills.

y Mr. von Holst:

Q. Did you ever have a life insurance policy with Eunice le as beneficiary? A. No, no, I was just digging her every y I could to get even for her, that she had sent in this uff.

Q. Well, now, your answer is, "No". Let's just answer e questions.

Now, your letter says here, "I had a life insurance policy ade to you and girls". What are "girls" there, who does at refer to? A. Well, that would refer to two girls that e had, her two girls.

Q. Her daughters? A. Yes, yes, her daughters.

Q. Did you have a safe deposit box at Portsmouth? My son, Paul, kept my papers that I had there.

Q. Now, this letter goes on to say, "had it in a Safety posit Portsmouth". I suppose that means a safe deposit x at Portsmouth, is that right? A. Well, it could have en.

5815

Q. Well, isn't that what it meant, "I had it", or, rather, "had it in a Safety Deposit Portsmouth"? A. Well, I was writing her this letter to try to get even with her.

Q. Well,—— A. Where she had—go ahead and ask me the——

Q. See if I am reading this letter right:

> "had it in a Safty Deposit Portsmouth at my Death Paul was to deliver it to you in Person after he reed letter from Mama you were all through with me."

5816

Mr. Harris: By the way, Mr. Rodebaugh, there is no punctuation in that quote from beginning to end.

Mr. von Holst: That is right.

A. Gentlemen, she had wrote a letter to Portsmouth, I was up there selling fruit, and registered it, a nasty letter, sending me down in the country, about these notes here, and my wife got the letter and signed for it, and then she tried to sue the Government for not delivering the letter to C. L. Stokley in person, and I think she did get something for that, I won't be sure, she claimed she did, she caused the mail clerk to lose his job for it, turning it over to my wife, instead of C. L. Stokley in person.

5817

By Mr. von Holst:

Q. Is it or is it not true that you had a policy which Paul on your death was to deliver to Mrs. Cole in person? A. No, I was bluffing her.

Q. Well, do you mean to say that the following in this letter is true or false:

> "I had a life Insurance Policy mad to you and girls for $3000—With Duble indemnity I had carried it 5 years and 7 mo had it in a Safty Deposit Portsmouth at my Death Paul Was to deliver it

5818 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

to you in Person after he recd letter from Mama you were all through with me."

Is that whole statement that I have read to you from your letter true or false? A. False.

Q. Was it false at the time you wrote the letter? A. I presume it was, it has never been true.

Q. And you just made that up,—— A. For a purpose.

Q. —did you? A. Yes.

Q. You made up that story? A. Yes.

5819 Q. Now, then, I want to continue with this letter. It goes on:

"he advised me"—or we——

Mr. Harris: Me, I think it is, "me".

Mr. von Holst: How have I got it?

Mr. Harris: You have got it, "me".

Mr. von Holst: "Me".

By Mr. von Holst:

Q. "he advised me surrender Policy to co and get cash value which I did Recd $600.94 Where I made my mistake I sent the check——

5820 Mr. Harris: No "the check", you didn't get the "the" in the translation.

Mr. von Holst: Then I did it wrong, Mr. Harris.

Mr. Harris: All right.

Mr. von Holst:

Q. " . . . the check with a Tavaries Bank ck to Judge D paying my years Interest"

Now, did Paul advise you to get the cash surrender value of a policy? A. No, no, I have told you the letter was erroneous. I was writing the letter for a purpose.

Charles L. Stokley—For Amici Curiae—(Recalled) 5821
—Redirect

Q. Well, now, I am asking you about this advice from Paul. A. Well,——

Q. You say Paul never gave you that advice? A. No, never had anything to do with it.

Q. Did you ever receive $600.94 cash surrender value of a policy? A. No, I borrowed a loan on a policy, thereabouts, from the policy I had here, to use for fertilizer.

Q. That is the insurance company you have already mentioned? A. Yes.

Q. What was the amount of that loan? A. About six 5822
hundred dollars.

Q. Well, but in this letter you specify $600.94. A. Yes, well, if I hadn't done that I couldn't have brussed her to believe, so she would have sent it to you.

Q. So this was a false statement also, was it? A. Absolutely.

By the Master:

Q. What company was it, Provident Mutual? A. How is that, Judge?

Q. What company was it in which you had this policy? A. The only insurance company that I am insured with is the Union Life Insurance Company and the Providence 5823
Mutual, of Philadelphia, and I borrowed on one, that is the one here, to use for fertilizer.

Q. What is the Union Insurance Company? Where is that located.

Mr. Harris: Union Central.

A. Norfolk.

The Master: Have you had any communication with either of these companies to verify or otherwise, verify or deny these statements?

Mr. von Holst: Are you addressing that statement to me, Mr. Master?

5824

The Master: Yes, to you.

Mr. von Holst: I had no knowledge of which the companies were. That was the reason, one of the reasons that we wished to recall Mr. Stokley and find out about this.

The Master: You know, Mr. Stokley, we can ascertain from these companies exactly what did happen between you and them.

The Witness: Well,——

Mr. von Holst: I think, if the Master please, that we should pursue this thing further, now that we know the names of the companies.

5825

By the Master:

Q. What did you start to say, Mr. Stokley? A. She had these notes of mine for collection and she had bought a nice, new car, and claimed she had lost the notes, and I was bitter against her for losing them, and on Thanksgiving—before I wrote this letter she returned these notes with a nasty letter that she hoped I was satisfied, that she had found the notes and they were in the back of her strong box, she had lost them—here is the notes that she held up, and this Mr. G. O. Watkins lived in Winter Park, that I had loaned the money to, and he had died and the widow got a Government loan, that caused me to lose these notes entirely. Pass them to the Judge. I had assigned them over to her for collection and she caused me to lose that money and I was as bitter against her as I could be.

5826

(The witness produced three notes.)

By Mr. von Holst:

Q. Mr. Stokley, I don't myself see where any of this explanation means anything. I want to ask you why you made up this statement, if you did make it up:

Charles L. Stokley—For Amici Curiae—(Recalled) 5827
—Redirect

"Where I made my mistake I sent the check with a Tavaries Bank ck to Judge D paying my years Interest I should have Deposited Ck from Ins Co in Bank of Tavaries and made ck for the Whole amt"

Is that statement also false? A. Yes, that is a false statement in that letter.

Mr. Harris: Well, before you go any further, may we mark these for identification, these three notes to which Mr. Stokley has referred? 5828

(Note dated February 1, 1928, from G. O. Watkins to the order of C. L. Stokley, for $856.92, was marked Universal Exhibit 17(A) for identification.)

(Note dated February 1, 1928, from G. O. Watkins to the order of C. L. Stokley, for $856.92, was marked Universal Exhibit 17(B) for identification.)

(Note dated February 1, 1928, from G. O. Watkins to the order of C. L. Stokley, for $856.92, was marked Universal Exhibit 17(C) for identification.) 5829

By Mr. von Holst:

Q. Why were you telling Mrs. Cole that you made a mistake in endorsing the insurance company check to Judge Davis instead of depositing the insurance company's check in the Bank of Tavares and making a check for the whole amount? A. I was just writing her to let it soak in. I was trying to make her believe that she had lost something by not cashing those notes when she was given them. Instead of that, she had put them away, and it was a total loss to me. I never got a penny out of the notes. The man died,

Mr. Watkins, and Mrs. Watkins got a loan from the Government, and they sent me to come to Orlando and did offer me fifteen dollars, which would be the Marshal's fees to come up from Miami and serve them on me for my twenty—let's—thirty-two or three hundred dollars I have here.

By Mr. Harris:

Q. No, twenty-five hundred and something. A. Twenty-five hundred, yes.

Q. Three notes. A. She bought a new car in the mean-
5831 time, and I was so sure she had cashed those notes in on me and left me out on it.

By Mr. von Holst:

Q. But what has all that got to do with your statment to her that you made a mistake? A. Not a thing in the world.

Q. Well, you claim that you had some controversy with Mrs. Cole at the time you wrote this letter? A. On just before Thanksgiving of—in November—this is in '29—why, out of a clear sky she sent those notes back, with a dirty letter, and I tried to make her think I was trying to pro-
5832 tect her and give her something at my death, and the reason why, because she had already wrote, so as I think I can show you, she had gone to one of the fruit companies, had got hold of a letterhead of theirs and had made it out that I got more for the fruit than I had turned in to my Government, and it was sent in to New York and sent back to the Revenue Office, Internal Revenue, at Jacksonville, and Mr Bertrand, knowing me quite well, and I just carried it to all the banks and to the fruit company and showed it was a false statement, that she had no right to send a notice, she didn't sign any name to it, to send it in for evidence that I had gotten that much out of the fruit. I was going to show you the one that she——

Q. I would like to look at all that a little later, Mr. Stokley. A. All right, I beg your pardon.

Q. If you will let me, I would like to interrogate you on this letter first. A. All right, go right ahead.

Q. And I still say I don't see, myself, why you told her—— A. Well,——

Q. ——anything—just a minute—anything about having made a mistake in endorsing an insurance company check to Judge Davis instead of making out a check on your own bank to Judge Davis. What relation does that have with any controversy that you had then with Mrs. Cole? A. You never had an argument with a woman in your life? If you did, you would understand. 5834

The Master: Well, answer the question, if you can.

The Witness: I don't know, no, sir. I do know why I wrote it, I was just writing this letter, digging.

By the Master:

Q. Why did you bring in Judge Davis' name at all? What had he to do with this? A. Not a thing.

By Mr. von Holst: 5835

Q. Now, at the time this letter was written, in December, 1940, you owed Judge Davis money, didn't you? A. Oh, yes—do now.

Q. Yes, but you owed him on the four thousand dollar loan, according to your statement. A. Yes.

Q. Is that right? A. That is correct.

Q. Now, then, there never was a year's interest on four thousand dollars at eight per cent that came anywhere near six hundred dollars, was there? A. No, certainly not.

Q. The most that you could owe Judge Davis for a year's interest on his loan, if you had paid nothing on principal at

that time, would have been $320, isn't that right. A. It would have been three times—four times eighty.

Q. Eight times four? A. Eighty.

Q. $320 is one year's interest on four thousand dollars at eight per cent, isn't it? A. Correct.

Q. And yet your letter says here that you used $600.94 and a further check—which you don't state the amount of—on the Bank of Tavares and sent it in to Judge Davis for one year's interest. Now, isn't that one year's interest on the so-called Kaufman transaction? A. No, sir, has nothing
5837 to do with Kaufman, and didn't have anything to do with Judge Davis.

The Master: Does the record of the bank show anything about this transaction?

Mr. von Holst: In the Tavares Bank we find no check, if the Master please, that would be the difference between this insurance company check and one year's interest, which would be $800 on the Kaufman loan, if that answers your question. That is one of the reasons we subpoenaed the bank statement, to see if there was a check which, added to $600.94, would make up one year's interest on the Kaufman
5838 loan, because obviously it cannot refer to the Davis four thousand dollar loan.

But I might say to the Master that maybe this next question will explain a further point there.

By Mr. von Holst:

Q. Mr. Stokley, you had other bank accounts in addition to the bank account in the Tavares Bank, didn't you? A. No, sir, I banked with Rogers for the last—I think half a dozen years would be about right.

Q. In 1935, 1936 and 1937 didn't you have a bank account with the Eustis Bank? A. Not since about '35—no.

hardly then, I don't think since about '30. I deposited a little bit with the bank, First National Bank of Sanford.

Q. When did you have that bank account? A. I had that bank account—I can't say, but it has been five years ago.

Q. When did you open the Sanford Bank account, to the best of your recollection? A. I only had it for a couple years, and possibly '34 and '5.

Q. Were they the only two years that you had the Sanford Bank account? A. I am quite sure, yes.

Q. And it was closed before '36? A. I believe so.

5840

Q. And what about the Eustis Bank? A. Well, that was closed before I used the Sanford Bank.

Q. So during the years 1936 to 1940 the only bank account you had was the Bank of Tavares? A. I am quite sure.

Q. I want to continue asking you questions about this letter. You further say, on page 2 of this letter:

"They have sent for me to explain to the High Court why I cashed this ck in on Policy."

Was that a false statement?

A. Yes, yes.

Q. You also say:

5841

"They also confiscated . . . ."——

Mr. von Holst: I think that is "confiscated".

Mr. Harris: "Confisticated".

Mr. von Holst: "Confisticated" is the way it reads.

By Mr. von Holst:

Q. ". . . . your letter of about May 1—Miss Hix said it never came to Atlantic Hotel". Were those two statements false? A. I don't recall just what I was writing about when I was telling her that, I never received any—the letter, the only letter that was received was the one that she registered, and my wife got it.

Q. Yes, but did the Government confiscate Eunice Cole's letter of about May 1st? A. I don't know.

Q. Do you remember whether Eunice Cole wrote you a letter about May 1st? A. No, I don't know that she did.

Q. Do you have any recollection of a letter from her which is referred to in your letter to her? A. No, I have not.

Q. You are not prepared to say whether that was a false statement, "They also confiscated your letter of about May 1", is that a false statement? A. I never received any letter from her.

5843 Q. Well, did you know that the Government had confiscated her letter? Did you make that up, too? A. Made that up, too.

Q. You made that up, too? A. Yes. She wanted to come up here to testify.

Q. Who is Miss Hix? A. I don't know Miss Hix.

Q. Was she anyone connected with the Atlantic Hotel? A. I couldn't say.

Q. Now, I also quote you this from your letter:

"I told him . . . . ." —that is the Deputy Marshal, isn't it? A. Possibly so.

5844 Q. "I told him I did not know. He also wanted to know what was—— A. "Meat" or "meant".

Mr. von Holst: "Meant", is that the way you have it, Mr. Harris?

Mr. Harris: Yes.

By Mr. von Holst:

Q. ". . . meant by Mr. Barker letter of April saying he had Rite address——

Mr. Harris: R-i-t-e.

Mr. von Holst: R-i-t-e address.

 5845

By Mr. von Holst:

Q. "—and so they believe we are holding out on government evidence in regards to the Investigation."

Now, did you have a talk with the Deputy Marshal? A. No, sir.

Q. Is that incident that you related to Mrs. Cole also made up? A. Yes.

Q. A lie? A. Yes, yes.

Q. At or about the time of this letter you had no talk at all with any United States Deputy Marshal, is that right? 5846
A. No, sir.

Q. You mentioned a Mr. Barker here. Isn't it a fact that the Mr. Barker whom you mentioned here was really Mr. Kaufman, that you meant Mr. Kaufman, by Mr. Barker? A. No, sir.

Q. Well, who is Mr. Barker? A. I couldn't tell you, he is someone I was imagining, just put down a name.

Q. You invented him, too? A. Absolutely.

Q. You don't know any Mr. Barker? A. No, sir.

Q. Does Mrs. Cole know a Mr. Barker? A. Why, she might know a Barker, I couldn't say.

Q. But you, at the time you wrote this letter, didn't know whether Mrs. Cole knew a Mr. Barker or not? A. No, no. 5847

Q. And did you at the time you wrote the letter think that you would be deceiving her by inventing a name, that you didn't even know she knew a Mr. Barker? A. I couldn't say what I was thinking about, I was just scribbling a letter to her. If you hadn't of read it to me I couldn't read it now, after it has got cold, myself.

Q. Now, then, reading again from the last page of this letter from where I left off:

> "Now please don't know anything or they will pick you to pieces and have Mr. Barker up there at the government don't mind expenses."

5848 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Why did you ask Mrs. Cole not to know anything?

A. I don't know, didn't even—couldn't—couldn't conceive now why I wrote that "tomfooler" to save my life, I was just spending the evening there, had my truckload of honey, and stopped in Savannah and scribbled this letter to her.

Q. There was no reason at all at the time you wrote this letter why Mrs. Cole shouldn't know anything? A. None that I know of, I don't know.

5849 Q. You had no reason whatsoever for asking her to keep quiet about anything? A. No, sir, I didn't have anything hid in the bush at all, and if I had, and she had known it, you would have her, as bitter as she is against me.

Q. But it says, Mr. Stokley, "or they will pick you to pieces." Doesn't that show that you were anxious about her? A. No, I wasn't anxious about her, I was anxious to write her a letter to "dumfuddle" her, so she wouldn't know where she was at.

Q. Doesn't that show that you were concerned lest she be brought into the investigation? A. No, sir, I wasn't concerned at all, didn't care how much she was brought in, she —I don't know of anything that she knew relating to it.

5850 Q. "And have Mr. Barker up there at the . . ."—now, you left a word out there, didn't you, Mr. Stokley— at the hearing, or at the Grand Jury, or something? A. Looks like I was abbreviating it, I was making it as short as possible.

Q. Well, isn't it that you just left a word out? A. I couldn't say anything intended.

Q. Well, at any rate, this next sentence is, "government don't mind expenses," that is right, isn't it? A. Yes.

Q. That is, you are telling her that the Government will haul her up,—— A. Yes.

Q. —and haul Mr. Barker up? A. And don't mind expenses.

Q. That is right. A. And I can show you that they didn't, when they come clear down to see me about this letter here that she wrote.

Q. I don't doubt that. Now, you end this letter this way:

"Yours after 23 years should they come questioning you know nothing," and you underscore "know" once, and you underscore "nothing" twice, is that right?

A. And I should have put C. L. Stokley there, and I intended to, I just forgot it. 5852

Q. All right. A. But you would have—you have another letter that beats that one, haven't you?

Q. Now, Mr. Stokley, had you known Mrs. Cole twenty-three years at the time you wrote this letter,——A. No doubt.

Q. —in 1940? A. Possibly more than that, I should say, I just picked out twenty-three years, it sounded like a pretty good number, I guess, so that is why I said it.

Q. Why did you tell her that she should know nothing if the Government came questioning? A. Just as I told her the twenty-three years—I was just writing something to her I didn't mean.

Q. Well, the twenty-three years was correct, wasn't it? A. No, I think it is longer than that. I won't be sure. 5853

By the Master:

Q. The only thing in the letter that you say is correct is that the Government doesn't mind expenses, is that right? A. Yes, sir.

Mr. Harris: Well, he admits he knew her about twenty-three years.

The Witness: I would like to show this to the Judge, I don't know how—that is just a statement from the company that I sold the fruit to, and for

some way she got this stationery and put fifty-five hundred dollars. This one is correct (indicating), from the company, and she put fifty-five hundred and sent it in, and I came in one day from putting on poultry manure, and some dignified gentlemen was setting out there in a New York car, and they showed me their pictures and told me they were down to see me, and I asked my wife when I went in to wash my hands, "Who is my company?", she says, "Some tourists, I guess," and these gentlemens says that, "You owe the Government so much income tax, and you can settle it if you do it now with a note."

I says, "Gentlemens, I don't owe any income tax."

And they showed me a letter where I had sold fifty-five hundred dollars' worth of oranges on that date, and that is the entire crop off the holdings.

And how she got hold of the letterhead, I went down to the fruit company, they didn't know, but it was misleading, so those gentlemen came up there with fifty-five hundred dollars that I owed, and that is correct (indicating), off of the books there. Haven't you got a copy of that, or is that all the letters that you have, please, sir?

Mr. von Holst: I had seen a copy of a statement that Mrs. Cole made for the Government.

The Witness: You have?

Mr. von Holst: Yes, but it didn't have anything to do with this letter, did it?

By Mr. von Holst:

Q. Now, Mr. Stokley, will you please state fully what possible explanation you have for having invented all the statements which you say you invented in your letter of December 19, 1940, to Mrs. Cole? Just what was the situation at that time—— A. Just as I have before stated——

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

5857

Q. —that made you invent that whole thing? Now, I ven't got it yet. I didn't understand what you said. A. thought I would give her that much trouble to write her is tomfoolery there, and I wasn't—I wasn't intending that e send it to you gentlemens, but I didn't care, but she wrote nother and I answered that from Portsmouth, that you ould have. That is more complicated to me than that one.

Q. All right. A. When I was writing it to her

Q. Will you just answer the question, if you can?

5858

Mr. von Holst: Mr. Stenographer, will you read that question again, please?

(The question was repeated by the reporter as follows:

"Q. Now, Mr. Stokley, will you please state fully what possible explanation you have for having invented all the statements which you say you invented in your letter of December 19, 1940, to Mrs. Cole? Just what was the situation at that time that made you invent that whole thing?")

By Mr. von Holst:

5859

Q. I don't care anything about what happened after, Mr. Stokley. I want to know why you would invent these particular fabrications in December 19, 1940, if you have any explanation of it. A. I think I have made it pretty plain, I did it, writing her this letter, to get even with that impudent letter she had wrote me. I went at it from a different angle.

Q. In what respects are you getting even with her in the letter that you wrote to her on December 19, 1940? In what respect are you getting even with her? A. Well, what would you say? She wouldn't understand it, and if she did, she wouldn't have sent it to you gentlemens——

Q. I might correct you there, Mrs. Cole hasn't sent us that letter, that letter was obtained from the files of the

United States Attorney. A. Well, it was—she had it sent there because she answered it in a registered letter to Norfolk, she had hold of the letter, received the letter, and turned it in.

Q. Well, have you made all the explanation that you are able to make,—— A. I don't know,——

Q. —care to make? A. —what else would you like for me to make?

Q. I merely wish you to have any opportunity that you should have to explain what you wish to explain about how you came to write the letter, if, as you say, all the statements in it are false. Now, isn't it a fact that the statements in that letter are not false, Mr. Stokley? A. Absolutely false, I don't know of anything that would be definite about it, that would lead to anything whatever. If you are trying to——

Q. Well, weren't you paying the Kaufman interest, on the Kaufman loan, in the early days, weren't you paying that interest to Judge Davis and not to Morgan Kaufman? A. No, sir, no.

Q. Now, isn't that the fact? A. No, that was coming to Judge Davis, Judge Davis's part.

Q. I am talking now about the four hundred dollars, which is semi-annual interest on ten thousand, at eight per cent, and two hundred dollar payments, which are quarterly instalments of eight per cent interest on ten thousand dollars. A. All the money that I had paid——

Q. Now, just a minute, Mr. Stokley. Isn't it a fact that after, immediately after 1935, when the deal was closed, the Kaufman deal was closed, that for a while there you made payments of interest on the Kaufman loan to J. Warren Davis? Now, isn't that a fact? Isn't that true? A. I—I have no record of it, and I don't—the check from the Richmond Company—what was it, the Richmond Produce Company, that was sent to Judge, but that was a check that I had given him, that I didn't have sufficient funds.

Q. I am not talking about that check, I am talking about —and I want you to answer the question, please—payments of four hundred dollars or of two hundred dollars. Now, then, you know that one year's interest on ten thousand at eight per cent is eight hundred dollars, isn't it? A. Yes.

Q. Ten thousand at eight per cent? A. Yes.

Q. Half a year's interest on that is four hundred? A. Yes.

Q. And a quarter would be two hundred, right, a quarter year's interest? A. Sure.

5864

Q. Now, isn't it the truth,—and what we want here is the truth, Mr. Stokley, and I don't know whether it was by mistake or misapprehension on your part or what—but isn't it the fact that in the early years, right after 1935, 1936, '37, that you sent those first payments of interest that were due on the Kaufman loan to Judge Davis? A. No, sir.

Q. All right, that is your answer? A. I sent Judge Davis different checks at different times, but I wouldn't have had the four thousand paid down to thirteen hundred if it hadn't been all on his principal.

Mr. von Holst: I should like to offer in evidence this letter that has been marked as Amici Exhibit 205.

5865

Mr. Harris: Well, now, Your Honor, of course——

Mr. von Holst: I think it is competent proof.

Mr. Harris: —that is not offered, I assume, and cannot be received as proof of the truth of the statements in the letter, because it is an unsworn statement. I suppose it is offered in connection with an attack on the witness's credibility, and I don't object to its competency if it is offered for that purpose. But if it is offered as proof of the statements in the letter, of course, it is most improper.

Mr. von Holst: It is a contemporaneous account or statement by the witness himself, before the present situation developed, and I think it is clearly

competent as original proof, and I also think it is competent as bearing upon the veracity of the witness.

The Master: Well, I will receive it and consider later the question as to whether it is competent in all particulars. It is certainly competent as bearing on the credibility of the witness.

Mr. Harris: I, of course, have a general objection as to materiality and relevancy,——

The Master: Yes, I understand, sir.

5867 Mr. Harris: —as far as my client is concerned.

(Letter and envelope, dated December 19, 1940, from C. L. Stokley to Mrs. Eunice Cole, previously marked Amici Exhibit 205 for Identification, was marked Amici Exhibit 205.)

By Mr. von Holst:

Q. On the second page of this letter that you wrote to Mrs. Cole on December 19, 1940, you said—or, beginning on the second line of the first page, from the bottom: "Where I made my mistake I sent the check with a Tavares Bank
5868 ck to Judge D." Did Mrs. Cole at that time know who Judge D was? A. I presume she did.

Q. Had she ever met Judge Davis? A. Yes.

Q. Where did Mrs. Cole live? A. Eustis, five miles from Mount Dora.

Q. And how had she come to meet Judge Davis, if you know? A. Well, she had met him on different occasions, as the years go by, where she had worked for us and she had met him in my home.

(Discussion off the record.)

Mr. von Holst: I am sorry that I don't have a copy of this, Mr. Harris.

By Mr. von Holst:

Q. I want to show you a photostat of a letter dated March 3, 1939,—

Mr. Harris: It is a photostat of a carbon copy, Mr. von Holst.

Mr. von Holst: Is it?

The Master: Yes, it appears to be. It isn't signed.

Mr. von Holst: Yes, that is right.

5870

By Mr. von Holst:

Q. —addressed to you at Mount Dora, Florida, and signed, "Your Cousin". Can you identify that as a photostat of a carbon copy of a letter which you received from Judge Davis?

(The witness examined the letter.)

A. Well, wasn't his name signed to it?

Mr. von Holst: Well,——

The Witness: I don't recall the letter. It sounds all right, but I don't recall of ever seeing this before.

5871

By Mr. von Holst:

Q. Do you recall receiving the original of that letter? A. You had some letters here that were similar, well, not exactly like that, but similar to that, but this—this specific piece, I don't recall that.

Q. You don't recall receiving the original of this letter? A. No, I do not.

Mr. von Holst: Now, here is another one I haven't got a copy of.

The Master: Was there any reply to that letter?

Mr. von Holst: I think this one may help to fix the date in the witness's mind, Your Honor.

5872 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Mr. Harris: What has the date of that one?
Mr. Poore: March 3rd.
Mr. Harris: Oh, yes.
The Witness: '39.

By Mr. von Holst:

Q. I show you this letter of February 27,— A. Read it to me, as is.

Q. Yes, —1939, this is typewritten, it is addressed to Judge J. Warren Davis, and it is signed "Bill". Do you
5873 know who Bill is? It is on your letterhead, I notice. A. Well, C. L. Stokley & Son.

Q. Yes. A. That is my boy, possibly put it down that way. He generally would have signed it for me, but that is all right. Read it over to me.

Q. Yes, just take your time.

(The witness examined the letter.)

The Witness: I should say beyond a doubt that this—this letter is correct, that he is writing back in regards to the amount of fruit that we had sent him and was giving us credit with it.

5874 *By Mr. von Holst:*

Q. By "this letter", you mean March 3, 1939? A. I think so, yes, sir.

Mr. Harris: I don't think the witness ought to testify what his opinion is. He was asked what the fact was. If he recalls it, it is all right.

Mr. von Holst: I don't think he can identify the letter.

By Mr. von Holst:

Q. You can identify this one of February 27, 1939?

Mr. Harris: Mr. von Holst, if you tell me that that carbon copy is a carbon of a letter which Judge Davis sent and it was found in his files or produced from Judge Davis' files, I won't raise any objection to its competency.

Mr. von Holst: Well, I think we can identify it through Judge Davis tomorrow.

Mr. Harris: All right.

Mr. von Holst: I don't really know how this came. You see, all this stuff comes from the United States Government. How it got there, I don't know. 5876

Mr. Harris: It certainly looks as if it were competent.

Mr. von Holst: I think Judge Davis can identify this letter.

The Master: I think so.

By Mr. von Holst:

Q. But you can identify this letter of February 27, 1939, as a letter that your son sent out to Judge Davis? A. Well, Bill was tending to the writing for me and it is possible that all of it is correct. I don't recall any of the items, or the letter that he got off, but he was authorized by me to answer some correspondence for Judge. 5877

Q. That is his signature, isn't it? A. I believe that is Bill's signature.

Mr. von Holst: I would like to have that letter marked for identification—I don't think we shall need to put it in—as Amici Exhibit 206.

I would also like to have this letter of March 3, 1939, marked for identification as Amici Exhibit 207.

(Photostatic copy of letter dated February 27, 1939, from "Bill" to Judge J. Warren Davis, Trenton, New Jersey, was marked Amici Exhibit 206 for Identification.)

5878 *Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect*

(Photostatic copy of carbon copy of letter dated March 3, 1939, to Charles L. Stokley, was marked Amici Exhibit 207 for Identification.)

By Mr. von Holst:

Q. Now, just refreshing your recollection from this letter, Amici Exhibit 207 for Identification, which is addressed to you and signed "Your Cousin", letter of March 3rd, do you remember that in 1939 you and Judge Davis made out
5879 a statement of all your payments? A. No, sir, I haven't had a statement. That is what I want, is a statement as to how much I owe him now. I haven't had it all the way through. I just left it entirely up to him and Miss Kliesh.

Q. You have never had a statement from Judge Davis as to how much you owe him on your four thousand dollar loan? A. No, sir.

Q. How much do you think you owe him? A. Thirteen hundred and some interest.

Q. Wait a minute, now, you say you owe him thirteen hundred dollars principal? A. Yes.

Q. How do you arrive at that figure? A. Counting back the different payments that I had paid him all along, since
5880 I borrowed, I figured it down to about thirteen hundred dollars.

Q. And have you a list of those payments? A. No, I have not. The Judge has that.

Q. Well but you say you definitely know that you owe him thirteen hundred dollars principal? A. No, I take that back, I don't definitely know, but that is what——

Q. That is what you think you owe? A. I think——

Q. You think you owe that? A. If I had thirteen hundred dollars and the interest to date I could make a settlement with him.

Q. Well, I am not interested in that. But forgetting interest, is it your best belief that you owe him thirteen

 5881

hundred dollars principal on the four thousand dollar loan? A. Last year, yes, that was, when I was here before, is what I so stated.

Q. Well, have you paid him anything on the principal since then? A. No sir,—nor on the interest, either.

Q. Well, now, then, can you state how you arrive at that figure of thirteen hundred dollars? A. Only in this way, the different checks all along, since I borrowed it, which aggregate just about that amount.

Q. Where are those checks? A. I haven't got them. All 5882
my papers would have been turned over to me if she hadn't went writing the Government, and they are down in Jacksonville now, in a jumbled pack, that is the way Mr. Bertrand put it, just jumbled up together in a box, abstracts and all.

Q. You say you have the checks now? A. No, sir, I haven't, I turned over to you when I came here the last time all the checks that the Bank of Tavares had given me except a cashier's check, and Mr. Rogers sold me a cashier's check for a hundred dollars, which would have made the three hundred that I stated here he would have been paid, Judge, that year on the amount. He wanted four hundred.

Q. Now, we will come back to that. Now, will you show 5883
me, please, in accordance with the subpoena that was served upon you, all the memoranda, records—this is paragraph 5 of the subpoena; books of account, correspondence, writings, printings, of every nature and of whatsoever date, or copies thereof if the originals are not in your possession, pertaining in any way to the life insurance policy for three thousand dollars that you have referred to before, to the disposition of the cash surrender value of that policy, in the sum of $600.94; and, sixth, the cancelled check drawn by you on the Bank of Tavares and sent to J. Warren Davis in payment of interest, and referred to in the letter to Eunice Cole? —all those papers, referring to that transaction mentioned

5884 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

in your letter to Eunice Cole. Will you show me all the papers which you have brought? A. I haven't any letters pertaining to that, but I brought every letter that was in my possession that would be of any value to you gentlemen. Here is—shall I start at tax receipts, would that help?

Q. No. Have you any further correspondence with Eunice Cole here? A. No, I haven't.

Q. A letter from her or to her? A. No, sir, I destroyed all the letters that she wrote at once. Please, sir, put that with my other paper there; that is a statement of the fruit.

5885 What year was this dated, right there?

Mr. Harris: 1942.

The Witness: That is 1941. Since that time the State road has cut off a portion of that property. Did you care to look that over?

(The witness produced a paper.)

The Witness: These are all tax receipts here. That is a note from the First State Bank. I am quite sure, at Eustis. There is what is owed on Kaufman's taxes.

5886 *By Mr. von Holst:*

Q. Well, so far as this Cole transaction is concerned, you have brought nothing, is that right? A. I have nothing, nothing at all.

Q. Did you make a search for the cancelled check which your letter to Mrs. Cole— A. No, I told you——

Q. —states that you drew on the Bank of Tavares and sent to J. Warren Davis? A. There was no check of that kind.

This has been taken care of. (The witness indicated a paper.)

Mr. von Holst: Mr. Harris, there is nothing in there that I want to use, if you want to go through it.

Mr. Harris: Well, I will look through it at lunch, if you don't mind.

The Witness: All right, I will put all my tax receipts pertaining to Mr. Kaufman, and I have Judge's paid.

By Mr. von Holst:

Q. I hand you a document—just a moment, I will show this to Mr. Harris, first—I show you a statement entitled "Note—income and exp statement", and it is on the letter- 5888
head of C. L. Stokley & Son, Growers and Shippers, Florida Fruit and Vegetables, Mt. Dora, Florida, and it consists of two pages. It does not appear to be dated. Can you tell me in whose writing that is?

(The witness examined the statement.)

A. That is in my son Bill's, I believe.

By Mr. von Holst:

Q. And do you remember in what connection that was made up? A. This would be a statement, as best we could give it, without keeping a set of books, to Judge Davis as 5889
to how we were coming along with our payment, I should say. Did it come from Judge Davis? Or is it a statement that he sent Morgan Kaufman? I don't know where he sent it. How would he have any way to tell whether this was sent to Judge or sent to—I was trying to get Kaufman to be lenient with me and I may have sent him just such a statement.

Q. Well, it says, "Note—income and Exp statement. Freight was paid W. K.—— A. Stokley.

Q. —Stokley &—— A. He had trucks.

Q. —Conrad—— A. He had trucks.

Q. —for fruit—— A. Hauling fruit with trucks.

5890 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. —hauled before C. L. Stokley & Son took over truck." Do you recollect in what connection this statement was made up? I have no information myself that I can give you; I am asking you. A. W. K. Stokley hauled fruit for us, which it said there, and then after taking over the truck, that is made out by Billy, and it shows that it is expenses of our operation there, that is all I can see.

Just a minute, what does it say about negro help, negro labor, dollar and a half per day?

5891 (The witness examined the document.)

The Master: There is no date on that, is there?

Mr. von Holst: There doesn't seem to be.

Mr. Harris: Does the item "licenses, 1938" suggest that it may have been for the year 1938? I suppose those are automobile licenses.

By Mr. von Holst:

Q. You see this, "licenses, 1938"? A. On the truck, that was licenses on the truck.

Q. It must have been at least as late as 1938? A. Yes.

Q. But you say that is in your son—Wilmer, is that.

5892 A. Billy.

Q. You call him Billy? A. Yes, Bill, I think he signed it there.

Q. Where? A. He signed it here——

Q. No, I don't see any signature? A. No.

Q. Insurance. A. Truck.

Q. Truck? A. Fertilizer.

Q. First plate glass, it looks to me like, and then the other is "life"; those are items for insurance, apparently, Mr. Stokley? A. Yes, truck insurance and plate glass insurance in building, cement building, was so much.

Q. Yes. A. And what was the other?

Q. Life,—life insurance, $409.20. A. Yes.

Q. Well, now I show you another statement.

Mr. von Holst: Mr. Harris, this next one is similar——

Mr. Harris: Do you mind identifying, by giving it a marking, the one you have just been inquiring about?

Mr. von Holst: The document which the witness has just been interrogated about is marked Amici Exhibit 208 for identification. 5894

(Statement on letterhead of C. L. Stokley & Son, entitled "Note—income & exp. statement", consisting of two sheets, was marked Amici Exhibit 208 for Identification.)

By Mr. von Holst:

Q. Now, I show you another statement, also on the letterhead of C. L. Stokley & Son, Growers and Shippers, Florida Fruit and Vegetables, Mt. Dora, Florida, comprising two statements, one, "Expenses", and underneath that, 9-1-37 to 9-1-38—is that right?—and the other sheet headed "Income", September 1, 1937—— 5895

Mr. Harris: I haven't got that one.

Mr. von Holst: Two sheets.

Mr. Harris: No, I only have one sheet.

(Discussion off the record.)

By Mr. von Holst:

Q. To September 1, 1938, is that right? A. Yes.

Q. Now, are those two sheets likewise in Wilmer's handwriting? A. I should say so. That looks just the same as this, to me.

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

(The witness referred to Amici Exhibit 208 for Identification.)

Mr. von Holst:

Q. Well, you are familiar with your son's handwriting? I want to see if there is any—that is Wilmer's handiting.

Q. Both sheets? A. Yes, sir.

Q. Now, do you recall in what connection this statement expenses and income was made up for the year beginning ptember 1, 1937 and ending September 1, 1938? A. It ks like a statement that he would make out so as we uld have something for income tax. I don't know who it s sent to. I have no knowledge as to it being sent up e.

Q. It may not have been sent anywhere, Mr. Stokley. was made up, was it, for your purposes, as you say to ow what your income and expenses were for that year? I don't know what he was getting at there. He goes on e, you see, he says Homestead, living,——

Q. Well, just answer the question, if you can. Was that le up for your purposes? You say you wanted some rmation for your income and expenses for that year, hat right? A. I can't say. That is the first time I ever that and I don't just get what it is all about.

Q. But it is in your son's handwriting, isn't it? A. Yes, ould believe so.

Mr. von Holst: I ask that this be marked Amici Exhibit 209 for Identification, two sheets.

Mr. Harris: That is the one you have just been interrogating the witness about?

Mr. von Holst: Yes, 209 for identification.

Mr. Harris: Two sheets.

Mr. von Holst: Amici Exhibit 209 for Identification, (A) and (B).

Charles L. Stokley—For Amici Curiae—(Recalled) 5899
—Redirect

(Statement on letterhead of C. L. Stokley & Son, entitled "Income", September 1, 1937 to September 1, 1938, was marked Amici Exhibit 209 (A) for Identification.)

(Statement on letterhead of C. L. Stokley & Son, entitled "Expenses", 9-1-37 to 9-1-38, was marked ~~Amici~~ Exhibit 209 (B) for Identification.)

Mr. von Holst: Mr. Harris, the one marked "Income" is Amici Exhibit 209 (A). 5900

Mr. Harris: 209 (A), all right.

Mr. von Holst: And the one marked "Expenses" is Amici Exhibit 209 (B).

By Mr. von Holst:

Q. Now, these items of income on Amici Exhibit 209 (A), do you recognize these names: N. J. Ward & Co., as a purchaser of your products? A. There was fruit hauled to N. J. Ward and Company during those years, I am quite sure that that would be true.

Q. And Ford Brothers? A. Down at St. Petersburg— 5901
or, Petersburg, Virginia.

Q. Also a customer of yours? A. Yes, sir.

Q. Williams, T. O. Williams? A. Yes, that is a meat man in Norfolk.

Q. And Paul R. Davis, is that a customer of your company? A. I didn't know—I think part of the—what city would he be in?

Q. It doesn't show. A. It doesn't show.

Q. You don't recall—— A. I don't recall.

Q. —who that is? A. I don't recall but N. J. Ward is in Washington.

5902 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. Then you also have an item here, "Fruit stored in Norfolk". A. Yes, I stored some fruit in Norfolk, I am sure it was stored at that date.

Q. That is, of your company? A. Yes.

Q. Here is Judge J. Warren Davis, seventy-five boxes of fruit. He evidently paid you $187.50 for that, is that right? A. Either paid for it, or was it—it was given credit on his four thousand,——

Q. Yes. A. —I should say.

Q. Well, anyway, that shows income to you for that year,
5903 is that right? A. Yes.

Q. And the same with these other items, Senator Sordoni, $437.50, one hundred and seventy-five boxes of fruit? A. Yes.

Q. He paid you that during that year, is that right? A. Yes.

Q. For fruit. And then these other two items are income that you received from rents and labor, is that right, $220.00 and $216.00?

Mr. Harris: $220 or $720?

Mr. von Holst: I guess you are right, $720, negro rents.

5904 *By Mr. von Holst:*

Q. Is that right? A. I don't—I know the rents, but they wouldn't amount to that much, and negro in labor——

Q. "Negro Rents in Labor" it says. A. Oh, yes, where the darkies work by the day.

Q. Well, in other words, this is a recap of your income from September 1st, 1937, to September 1st, 1938, isn't it? A. That is what it was made out for, I am quite sure. I don't know——

Q. Yes. Now, this other page, 209(B) for Identification, is likewise your expenses for that year, is that right? A. Packing Fruit.

Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect 5905

Q. Packing fruit and then picking fruit, freight, GMC truck, and so forth, isn't that all your expenses for that year? A. Yes, looks so.

Q. Now, then, the third item from the bottom on this "Expenses" is "Interest Paid ~~Judge~~ Davis 2/28/38", $400.00, is that right? A. Yes, if he didn't put it to principal. Billy put it down to interest, but I wouldn't have paid down to thirteen hundred unless this four hundred was subtracted from his payments—seventeen hundred I would owe him.

Q. Well, let me ask you that was paid apparently on February 28th, 1938? A. Yes. 5906

Q. Now, by February, 1938, had you reduced the principal on Judge Davis's loan? A. Yes, because, you see, I had that much fruit applied on it. He bought 185 boxes of fruit.

Q. Well, you couldn't, anyway, owe him four hundred dollars on interest, could you, for a year, at least? A. Well, let's see, suppose there hadn't been any interest paid, '35, '36, '37, it would have been more than the 185 boxes of oranges and the four hundred dollars in cash—if this was cash.

Q. One year's interest on four thousand at eight per cent. is $320, isn't it? A. Yes. 5907

Q. Had you paid any interest to Judge Davis on his loan before February 28, 1938? A. I couldn't say.

Q. What is your best recollection? A. I believe that was given to him in currency on my porch, plus this over here, the fruit, that he and Sordoni each got some fruit that year.

Q. You say that four hundred dollars was not interest at all? A. I don't know. Billy has put it down for interest, that would be all right, didn't make any difference to me which way he applied it, but I would have had to have these payments marked against the principal or I couldn't have gotten it down to thirteen hundred dollars.

5908 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. Of course, four hundred dollars is half a year's interest on ten thousand dollars, isn't it, at eight per cent.? A. Yes, but——

Q. Again, I ask you whether that interest is not interest which you were paying Judge Davis on the Kaufman loan. A. No, sir, I don't have any recollection or knowledge that Billy would have applied it that way. We would have sent it to Kaufman if we had had four hundred dollars to send.

By the Master:

5909 Q. Did you ever send any to Kaufman—— A. Yes, sir.

Q. —during this period? A. Yes, we have sent him several payments of interest.

By Mr. von Holst:

Q. Prior to 1939, when you paid six hundred dollars? A. I couldn't say. I believe so, though.

Q. Now, Mr. Stokley, you never made any payments to Mr. Kaufman before June; June 15th, 1939, did you, to Mr. Kaufman? A. I wouldn't say, but I believe I did. It seems to me that he wouldn't have let it tide along that long.

Q. Well, never mind what you surmise. As a matter of
5910 fact, you have no knowledge, and nothing to show, have you, that you ever paid him any interest or principal before that payment of September, 1939—of May, 1939, I am sorry—— A. Well, I haven't——

Q. —when you paid six hundred dollars? A. I havn't anything to show that I have paid him any interest, only what Billy has jotted down there at different places.

Q. Well, there was a cancelled check for that six hundred dollar payment to Mr. Kaufman in May, 1939, May 15, 1939. A. Well, there was more than that, wasn't there?

Q. Cancelled check to Mr. Kaufman? A. Yes.

Q. Have you any? A. No, if I did I would have had them right here.

Q. Well, we haven't been able to find any. A. Well, I believe there is some in that box of stuff in Jacksonville.

Q. Now, what box is that? A. That is what the Government turned over to the Internal Revenue at Jacksonville for their investigation.

The Master: What date did this investigation start,——

The Witness: How?

The Master: —with Judge Davis, Mr. von Holst?

Mr. von Holst: What date did it start? 5912

The Master: What was the date when the investigation began?

Mr. von Holst: We have never been able to ascertain that if the Master please. We asked——

The Master: Well, was it in the winter of 1939, or——

Mr. von Holst: To the best of our information, it was around the spring of 1939. It may have been in late '38. That was one of the questions that in one of our papers we suggested you endeavor to find out from the Government, what that date was, and we think it is important in these proceedings, but we haven't any definite information yet as to when it was 5913
actually begun.

The Master: I thought we did have some testimony indicating that it began in the early winter of '39.

Mr. von Holst: That is right, Judge Davis said——

The Master: That is my recollection.

Mr. von Holst: —in the testimony that it was, I think, in March of 1939.

The Master: Well, at any rate, it had begun before this payment to Kaufman?

Mr. von Holst: That is right, yes, sir.

5914 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

I wish to offer in evidence the statements of income and expenses, Amici Exhibits 209(A) and 209(B).

Mr. Harris: Well, I object to that, of course. It has not been proved. The witness says he never saw it before in his life until you showed it to him. He recalls certain items, but he didn't have it made up, doesn't know for what purpose it was made up, and never saw it before.

5915 Mr. von Holst: He states that it is in the writing of his son.

Mr. Harris: Well, that doesn't prove it. Call his son.

Mr. von Holst: And he stated it was made up for the purpose of showing income and expenses for that year.

Mr. Harris: Well, he says he assumes that. He doesn't know what it was made up for.

Mr. von Holst: No, I think not. I think his testimony went further than that.

Mr. Harris: I don't think so. He said he never saw it before. He interprets it just like you and I would, by looking at it, but he has no recollection of
5916 it that he has testified to up to date.

By the Master:

Q. Did you never see this before, Mr. Stokley? A. No, sir.

Q. It is in your son's handwriting? A. It looks so, Judge.

Q. Your son was in business with you, was he? A. Might I just explain to you why we turned over—we left the Government man come in and take everything out of the desk and all that he wanted to take out, and if for any reason Billy had made out some of that for future reference or something, he got all of that in with this conglomeration

that he had taken, some things that didn't even concern, and some that did.

Q. Well, your son was in business with you, was he? A. He was working with me.

Q. Did he do some of your business, such as making up accounts of this sort for you? A. Well, he was the only one had the education to make it up.

Q. Yes, and he commonly did make up statements of this kind for you, did he, when it was necessary? A. I should think I could truthfully say that he tried to get up something like that to keep account, and so on. 5918

The Master: Well, I will admit it in evidence and we can consider later——

Mr. Harris: Let me ask a question or two first. It doesn't appear to me that this is all in the same handwriting.

(Redirect examination suspended.)

Recross Examination by Mr. Harris:

Q. I call your attention to the last four items on Exhibit 209(A), there it is, the last four items, and ask you if that is in the same handwriting, if that is in your son's handwriting. 5919

(The witness examined the paper.)

A. Please, sir, it don't look so.

By Mr. Harris:

Q. Well, do you recognize it as your son's handwriting—— A. Just this one word,——

Q. —the last four—— A. —"labor", is the only thing that looks like Billy's writing, right there (indicating).

Q. The last four items seem to be in an entirely different hand to me, from the rest of them. What would you say?

5920 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Recross

Are the last four items there in your son's handwriting? A. Looks different.

Q. Well, would you say it was or was not in his handwriting? A. The word "labor" and "Sordoni" looks very favorable to me, that it is in Billy's handwriting, the word right here (indicating), but the other doesn't.

Q. You mean you think your son wrote "Sordoni" but didn't write the word "Senator"? A. I don't know, but I say it is written something like Billy's handwriting, and this word "labor" looks a little like Billy jotted it down, but I
5921 can't swear that it is his handwriting.

Q. Well, I don't know, it just looked different to me. If you say it is all in his handwriting it is all right with me. Is it, or isn't it? A. I can't say that it is. I don't see where it would matter, though, if it was or wasn't.

By the Master:

Q. Did anybody else ever make up statements for you except—— A. No, Judge,—my wife has helped me some.

By Mr. Harris:

Q. Well, I call your attention to the words "Judge
5922 Davis" on 209(B), and the words "Judge J. Warren Davis" on 209(A), and ask you if those are in the same handwriting. Do you think they are both your son's handwriting? A. It looks a little different, but I would—I would say it is.

Mr. Harris: All right, that is all.
The Witness: I wouldn't——
Mr. Harris: All right.

(Statement on letterhead of C. L. Stokley & Son, entitled "Income", September 1, 1937 to September 1, 1938, previously marked Amici Exhibit 209(A) for Identification, was marked Amici Exhibit 209(A).

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

5923

(Statement on letterhead of C. L. Stokley & Son, entitled "Expenses", 9-1-37 to 9-1-38, previously marked Amici Exhibit 209(B) for Identification, was marked Amici Exhibit 209(B).

Redirect Examination (Continued)

Mr. von Holst: Mr. Harris, I didn't plan to offer this. If you want it, I will put it in. It is immaterial to me. I don't want to encumber the record unnecessarily. If you think it ought to go in, I will put it in.

The Master: Which is that?

5924

Mr. Harris: That is the earlier one.

The Master: That is the first one I interrogated him about?

Mr. McCullough: That is 208 for Identification.

Mr. Harris: Well, all you are interested in is the item of interest paid, $400?

Mr. von Holst: Yes.

Mr. Harris: I don't see the materiality of this. If I may look at it and then perhaps request you to put it in later——

Mr. von Holst: Sure.

The Master: Did the witness explain the item for life insurance?

5925

Mr. von Holst: Yes, he made some explanation of some of those items.

Mr. Harris: Well, perhaps the Master would like it.

Mr. von Holst: He didn't explain in detail that life insurance.

The Master: I thought his testimony was a little uncertain about the life insurance policies, earlier.

Mr. von Holst: I think I shall interrogate him about that further.

By Mr. von Holst:

Q. Referring to Amici Exhibit 208 for Identification, and on the first page, there is this item under "Insurance", it

5926 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

says, "Life" $409.20. What is that, what company? A. Wouldn't he have meant the insurance on the truck and on the plate glass windows and the life insurance all aggregating $409.20? Was that——

Mr. Harris: No.

The Master: No.

Mr. von Holst: No, plainly not, Mr. Stokley.

The Master: Premium, undoubtedly.

Mr. Harris: Just ask him whether it was a pre-

5927 mium.

By Mr. von Holst:

Q. Wasn't that a premium, $409.20, a premium on life insurance? A. Well, the first item right there on the truck is all wrong, the insurance on that truck was one hundred and sixty some dollars, a big job to put over the roads, it cost one hundred and sixty dollars.

Q. Mr. Stokley, this total over here, $538.44, in the lower right-hand corner, is the total of the three items of insurance, $28.90, $100.34, and $409.20. Never mind the others, but I just want to ask you whether this $409.20 life insurance

5928 is not a premium on a policy, life insurance policy. A. No, we didn't have that much—the premium wouldn't have been that much.

Q. What premium? A. The premium on the policy at the—let's see, what is the name of the company, now?—Providence Mutual. I had lost my Penn Mutual insurance some years ago.

By Mr. Harris:

Q. But you had the Union Central, still? A. The Union, and the insurance in this city, and they have given me a statement when I got in yesterday, went right up there and got a statement from them.

Charles L. Stokley—For Amici Curiae—(Recalled) 5929
—Redirect

By Mr. von Holst:

Q. Well, are these—— A. Those two policies, the Union Life Insurance Company and the Providence Mutual Life Insurance Company, wouldn't have aggregated $409. Oh, it is possible he could have meant his life insurance in with that, his was with the New York Life, and it was some sixty dollars. Add those together and it would about make it up, what he was getting at, because I had to pay his expenses right along, just the same, his living.

Q. Well, now, how much insurance was there in this 5930
Philadelphia concern? What is that insurance company here in Philadelphia? A. That is the Providence.

The Master: It is called the Provident Mutual Life Insurance Company.

The Witness: Provident Mutual, the big building right down the street here.

By Mr. von Holst:

Q. All right, how much is the face of that policy? How much insurance do you carry in that company? A. Four thousand.

Q. And how long have you carried that? A. About seven 5931
or eight years, something like that.

Q. Now, what is this other insurance policy? A. That is for a thousand dollars, in Norfolk, with the Union Life Insurance Company. It is a State corporation.

Q. One thousand? A. One thousand.

Q. And how long have you carried that? A. Ten, fifteen years—ten years, anyway, or more.

Q. Is that your best recollection? A. Yes.

Q. What other insurance have you? A. I haven't any other. I had ten thousand with the Penn Mutual of Philadelphia and I had to drop that. Q. And when did you take

5932 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

out that? A. Forty years ago, down in North Carolina, I was on a vacation and had that wrote up then, carried it all those years.

Q. When did you stop paying on that policy, the Penn Mutual? A. That is when I was in the drug business and went in bankruptcy, about '29.

Q. And have you now named all the insurance companies you have ever been insured in? A. One year, the First State Bank carried twenty thousand on me with the Missouri Life Insurance Company, as my debts appeared, that is, they
5933 were carrying this insurance on me, I was borrowing money from the First State Bank, Eustis, they carried that for one year, Missouri Life, but with the exception of that, the Penn Mutual and the Providence of Philadelphia and the Union Life is all the insurance I have ever had.

Q. And what year did you carry this in the Missouri Life? A. About—now, I am surmising, this was about '26, possibly, that one year. Mr. Cates wrote it up for me.

The Master: You aren't through with the witness yet?

Mr. von Holst: No, sir, I am not.

The Master: Perhaps we might as well suspend,
5934 then, when you come to a stopping place. It is about one o'clock.

Mr. Harris: All right, sir. Might we have an extra fifteen minutes today, until 2:15?

The Master: All right.

(Recess, 1:00 until 2:15 o'clock P. M.)

AFTER RECESS

Present: Counsel as before noted.

Charles L. Stokley—For Amici Curiae—(Recalled) 5935
—Redirect

Evidence on Behalf of Amici Curiae (Continued)

CHARLES L. STOKLEY, recalled.

Redirect Examination (Continued)

The Master: You may proceed, Mr. von Holst.

Mr. von Holst: Mr. Harris, my next interrogation is on this one here (indicating).

Mr. Harris: $19,828.38. 5936

Mr. von Holst: Yes, that is right, in longhand.

Mr. Harris: All right.

Mr. von Holst: Please mark this document here—there are two sheets—Amici Exhibit 210 for identification, 210(A) and 210(B).

(Photostatic copy of letterhead of C. L. Stokley & Son, Mt. Dora, Florida, was marked Amici Exhibit 210(A) for Identification.

(Photostatic copy of paper entitled "Expenses, 9-1-37 to 9-1-38" was marked Amici Exhibit 210(B) for Identification.)

5937

By Mr. von Holst:

Q. Mr. Stokley, I show you two sheets, one of which is blank and is on your letterhead, and the other of which does not have your letterhead, and I refer you to the sheet without the letterhead, which is marked Amici Exhibit 210(B) for Identification. That is in your handwriting, isn't it? A. No, sir, I can't write as legible as that.

Q. Not in your handwriting? A. No.

Q. Whose handwriting is it in? A. It looks like Billy's, to me.

Q. That is your son, Wilmer? A. Yes, sir.

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

Q. Well, now, here is Amici Exhibit 209 (B), (A) and (B), that you said were in Billy's handwriting. Now, you think this 210(B) is in the same handwriting as 209(A) and (B)?

Mr. Harris: Well, just a minute, are you qualifying him as a handwriting expert? I think you can ask him if he recognizes the handwriting, but I don't think this man is qualified to compare two handwritings and to be asked whether they are the same or not.

The Master: That had occurred to me, Mr. von Holst. You can ask him if he recognizes the handwriting, but as to comparison between two, I don't think he is qualified.

Mr. von Holst: All right, Your Honor, I merely asked the question because he had identified the one as his son's.

The Master: Yes.

By Mr. von Holst:

Q. Well, referring, then, to 210(B), you say that it is your belief that that is your son Billy's handwriting, is that right? A. That is about the only way I could say. I imagine it is.

Q. Well, I don't want your imaginings. A. Will that pass?

Q. No. Do you believe it is or do you believe it is not?

Mr. Harris: Well, it isn't his belief, Your Honor, it is whether he recognizes it as someone's handwriting.

The Master: Yes, the question is whether he can say in his best judgment whether that is his son's handwriting or not.

Mr. Harris: That is right.

Charles L. Stokley—For Amici Curiae—(Recalled) 5941
—Redirect

By Mr. von Holst:

Q. Will you answer the Master's question? A. I can't say.

Q. You can't say? A. No, sir.

Q. Are you sure that that is not your own handwriting? A. No, it isn't mine. I will do my best to copy it for you to show you that it isn't. That vacation, down there, $120.00, that looks good! I don't know who has taken a vacation in my family in the last ten years.

5942

The Master: Does this cover the same period as this other statement we had?

Mr. Harris: It seems to, yes, sir.

By Mr. von Holst:

Q. I call your attention, Mr. Stokley, to the fact that this 210(B) is entitled "Expenses 9-1-37 to 9-1-38," and then Amici Exhibit 209(B) is similarly entitled, "Expenses (9-1-37 to 9-1-38)", and that item for item these two are the same except that the item of "Interest paid Judge Davis 2/28/38 $400.00," appearing on Amici Exhibit 209(B), does not appear on Amici Exhibit 210(B).

5943

Mr. Harris: For Identification.

Mr. von Holst: For Identification.

The Master: That is right.

By Mr. von Holst:

Q. And that the total, therefore, is different by that amount, $400.00. Now, have you any recollection of how these two documents came to be drawn up and the interest, the item of interest paid Judge Davis being omitted from the one and present on the other? A. I can't say. I don't recall of ever seeing this paper.

5944 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Mr. von Holst: "This paper"—210(B) for Identification.

The Witness: No, sir, I can't—can't answer it.

By Mr. von Holst:

Q. Can't throw any light on it? A. No, sir. Wish I could.

By the Master:

Q. Is that your son's handwriting, that second one,
5945 210——

Mr. Harris: (B).

By the Master:

Q. —(B)? A. Is what, Judge?

Q. Is that the handwriting of your son Bill, if that is what you call him?

Mr. von Holst: 210(B).

A. I don't know, it is wrote larger and it is—in making some of the letters it resembles some on the sheet there—what number did you call that?

5946 Mr. von Holst: 209(B).

The Witness: In making this out as expenses I don't know why they didn't put the other item on there. I don't know anything about it.

By the Master:

Q. Do you know which one was made first? A. No, sir, I do not.

Q. Can you suggest any reason why two statements were made up? A. I couldn't.

Q. Where is your son Bill, now? A. In the City of Orlando.

Q. Has he ever been a witness in this proceeding at all? A. How is that?

Q. Has he ever been a witness in this investigation? A. He was up to New York before the Federal Grand Jury. There is a little black book, if we had that here, that was turned over to the Government, and that has each thing put down in nice shape, I got the packing house lady to help me fix that book up, and it has expense of packing each year correct, and has the number of boxes and the expense of packing it, and so on, all correct, that was kept nice for me, I hired her to keep that for future reference, and the Government has that. That is down at Jacksonville. 5948

By Mr. von Holst:

Q. Now, wait a minute, the Government hasn't it now has it? A. Well, the Internal Revenue officer, Mr. Bertrand, has it.

Q. Well, Mr. Stokley, since we last convened here, since you last gave testimony—— A. Yes.

Q. —before Master White,—— A. Yes.

Q. —one of the men from our office and a representative from Mr. Harris's office, and a representative from Master White's office, have been down to the office of the United States Attorney—— 5949

Mr. Harris: In New York.

Mr. von Holst: In New York.

Mr. Harris: He says Jacksonville.

Mr. von Holst: I know, I just want to get this straight, Mr. Harris.

By Mr. von Holst:

Q. —to look over all documents that are in the United States Attorney's possession. A. Yes.

Q. And as a result of that search they couldn't find the little black book which you referred to the last time you testified here, it isn't there, and there were no checks from you payable to Mr. Kaufman except the check for six hundred

5950 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

"dollars which is dated May 15, 1939. A. Well, they came from the Jacksonville office and asked me—he sat down at home and drafted a letter and asked me to authorize the New York office, Federal authorities, to turn over all papers of C. L. Stokley's, and later Mr. Bertrand was at my house and he says they had come, but don't blame him for the condition they were in, that they were jumbled up together and he couldn't tell one from the other, and he wanted me to get Billy to help him go over the income tax, together.

5951 Q. Mr. Stokley, is there a box of documents now at Jacksonville, do I understand that? A. I am quite sure there is, because he says he would have shipped them to me during the holidays but there were so many things getting misplaced, and my abstracts being in there, that were worth something to me,——

Q. O. K. A. —he would wait and bring them down.

Q. Now, in whose possession is this box of stuff at Jacksonville? A. Might I ask just a minute?

Q. Yes. A. Is that letter in some of the stuff I gave you? I meant to have brought a letter from the Government——

5952 Mr. Harris: No.

A. —telling me about the mail during Christmas, that might be misplaced.

Mr. Harris: No.

The Witness: All right, thank you. I had that put out to bring.

By Mr. von Holst:

Q. Well, now, what I want to know is, this box, in whose possession is it now? A. The Internal Revenue, and it is in the office of Mr. Bertrand.

Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect 5953

Q. How do you spell his name? A. B-u-r-t-r-a-n-d.

Q. Bertrand? A. Bertrand.

Q. What is his first name? A. I couldn't say. He is a Canadian by birth.

Q. Is he an Internal Revenue officer? A. Revenue officer, yes, sir.

Q. At Jacksonville? A. Jacksonville, in the Federal Building, Post Office Building.

Q. And when did you last hear from him about this box? A. I wrote him this last week, but I haven't heard 5954
from him since right after Christmas, that he was going to bring it down to me in his car.

Q. Is he ready to turn it over to you? A. Yes, I suppose so.

Q. You can pick it up at any time? A. Yes.

Q. Do you know what is in this box? A. All the papers that was raked out, the same as some of this stuff, and all, that the Government man came there and taken them out of the files, Billy turned him over to the files to take out anything they wanted that would be of any interest to the Government.

Q. Have you looked at the contents of the box since you 5955
have learned it is at Jacksonville? A. No, I haven't stopped over in Jacksonville, haven't lost a day, and when I was up to New York I went in and tried to get some abstracts of my Orlando property and they couldn't find them, said they were in some other papers, but he says, "You needn't worry, your papers will all be sent to Jacksonville."

Q. And he has told you that you can have those papers—— A. Yes.

Q. —at any time? A. And I have a letter to that effect that I meant to have brought to you gentlemen. How about getting them all and expressing them back to you, as soon as I get to Jacksonville?

5956 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. Did you know about this box at Jacksonville, when you testified here before? A. I can't say whether it had been sent then or not, but he was at my house after I was here, and then later he wrote me about it, that he wouldn't mail them during Christmas.

Mr. von Hoist: If the Master please, this is one of the difficulties that we are up against. It is very hard to exhaust as we feel should be exhausted all the sources of information about these payments, these
5957 checks and these other things that are missing. Now, here is another possible locality where they may be. We thought that we had closed the door when we went in to examine the documents in the office of the United States Attorney, and now here is another box of documents, apparently, that were in the possession of the Internal Revenue Department that may or may not contain anything that is material.

I would like to ask this further question of Mr. Stokley.

By Mr. von Hoist:

5958 Q. Can you tell us that with the exception of this box, which you say is at Jacksonville in the possession of the Internal Revenue Department, there is no other place we could look for any of these documents that you referred to? A. Gentlemen, I am quite sure it is there. I have a letter that he had it there, and I wrote him a letter this last week and asked him to bring them down, and out of court that I would give him a nice box of fruit if he would help me with my income tax.

By the Master:

Q. Do you know if that black book is there? A. I am quite sure, Judge, it is, because they had it at the Federal

Grand Jury in New York when I was there, and Billy came on to explain it to the New York Grand Jury and taken the book, and it was in pretty good shape, I must say.

By Mr. von Holst:

Q. Now, does this black book that you refer to show payments to Kaufman? A. I don't believe it does. It shows all my packing and transactions and everything. It is possible that it does, but I doubt it.

Q. Does it show payments to Judge Davis? A. It shows 5960
my storage, shows my cold storage bill at Norfolk, and the percentage that decayed, and the temperature that we kept the oranges to keep from decaying.

Q. Does it show any payments made to Judge Davis? A. I can't say that.

Q. You don't know on either score? A. I don't know whether it has any payments to Kaufman or Davis jotted down in it.

Q. Are there any other records in this box at Jacksonville which would show payments by you to either Kaufman or Davis? A. Just what had been left in the desk, of our records. That is why we don't know how much I own Kaufman, or how much I owe Davis, they taken every- 5961
thing that we had. We had some stuff jotted down and I can't say whether they had in the courts up there in New York any of the records or not.

Q. Are there any cancelled checks in this box? A. Pardon me, please, but might I ask you this? Did the Government man say they went through this box and didn't find any cancelled checks? We had some checks in New York, I thought.

Q. The Government man didn't say anything, Mr. Stokley, he gave us leave to go through the records that he had, and we went through the records that he had and we found no cancelled checks except this one of six hundred dollars

5962 on May 15, 1939. That is true as to both Davis and Kaufman.

Mr. von Holst: Isn't that right, cancelled checks?

Mr. Poore: I think they had other batches of cancelled checks, but none that were of any relevancy.

The Witness: Well, I think Mr. Kaufman will bear me out in this, that I paid some twelve or fourteen hundred dollars on the bill. Of course, it all went to interest, because I haven't kept the interest
5963 up, but some of it must have been in checks. He could tell you.

Mr. von Holst: It is my recollection, Mr. Stokley, that Mr. Kaufman said that you had the records of the payments.

Mr. Harris: About 2808 [R. 1390].

Mr. von Holst: I think that is where he made that statement.

Mr. Harris: Yes; he said there was a little book that would show the payments to Kaufman—that is Stokley's testimony.

Mr. von Holst: That is right.

The Master: On his previous examination.

5964 Mr. Harris: Yes.

By Mr. von Holst:

Q. Now, Mr. Stokley, I want to show you an exhibit that has been introduced in this case, Amici Exhibit 112. This is a list which Judge Davis presented here showing payments which you had made to him on the principal of your loan to him, and on the bottom of this list it says:

"On Feb. 9, 1937 Mr. Stokley paid $320.00 for interest from March 10, 1936 to March 10, 1937." A. Now, Miss——

Charles L. Stokley—For Amici Curiae—(Recalled) 5965
—Redirect

Q. Now, let me ask you, please, did you make that payment on February 9th of one year's interest on the four thousand dollar loan, that you recall? A. Judge, Miss Kliesh kept the books, and I can't explain this at all. These payments look natural to me, that is just about the way it was paid.

Q. Well, I am just taking one at a time. Do you remember or do you not remember this payment of interest? A. Well, I remember that just as much as I remember any of it.

5966

Mr. von Holst: All right, may I have those bank statements, Mr. Rodebaugh?

By Mr. von Holst:

Q. Now, Mr. Stokley, I am referring to page 3 of the bank statements of the Tavares Bank that were introduced in evidence this morning as Amici Exhibit 204. On page 3 you will see that up at the left here, there is March, until we get to a blurred date which is apparently March 30th. Are you following me? A. Yes, sir, I am.

Q. And then we come to a period where the typewriter has not properly recorded the month, because there is only half of the letter showing? A. Yes. 5967

Q. Down at the bottom here we come to 17, and it is plainly April? A. Yes.

Q. So these are evidently from April 1st, on, for the balance of that page? A. Yes.

Mr. Harris: What year is that?

Mr. von Holst: 1937.

Mr. Harris: Oh, yes.

Mr. von Holst: Do you want to look at this?

By Mr. von Holst:

Q. And then on April 5, 1937 there is a check for $320, is there not? A. It is marked there.

5968 *Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect*

Q. Now, that would—— A. Be this item——

Q. —correspond, would it not, to the item on Amici Exhibit 112, March 10, interest paid on February 9th?

Mr. Harris: You say that would correspond with it? You mean it could be that payment?

Mr. von Holst: Yes, it could be that—and I will say this, further, that I have studied this thing and I can't find any other $320 item.

Mr. Harris: Well, Judge Davis's record doesn't

5969 show that it was a check on the Bank of Tavares.

Mr. von Holst: That is right.

By Mr. von Holst:

Q. As I understand, at this time this is the only bank account you had? A. Yes.

Q. Isn't that right? A. Yes.

Mr. Harris: Doesn't show it was paid by check, even, Judge Davis's record doesn't.

Mr. von Holst: That is right.

By Mr. von Holst:

5970 Q. Do you remember whether you paid that interest by check on the Tavares Bank? A. I can't say.

By the Master:

Q. Did you ever pay Judge Davis in cash? A. I don't know that I did, Judge, I may have paid him some difference, in one here, of fruit, and then it says cash, $15, that was to bring it up to even money or something—how did that come to be, fifteen dollars? I didn't recall that, but there is $197.50, and I thought I was just fixing to even it up, is the reason why here is fifteen dollars cash credit.

Q. [illegible] these larger sums you always paid by check, did you? A. How is that?

Charles L. Stokley—For Amici Curiae—(Recalled) 5971
—Redirect

Q. These larger sums that you paid, you always paid by check, did you? A. Yes, tried to.

By Mr. Harris:

Q. What bank was the first item of June 22, 1936, drawn on? You didn't have a bank account then, according to the testimony. A. There is two hundred dollars paid at that date.

Q. What bank was that check drawn on? A. I don't know. Does my bank say, this bank, that I didn't have any- 5972
thing in in '36?

Mr. von Holst: It was opened in October, 1936, Mr. Stokley.——

The Witness: October, I see.

Mr. von Holst: —by the deposit of a thousand dollars, on October 1st.

The Witness: Yes.

By the Master:

Q. Did you have no bank account prior to that? A. No, sir, I—I had failed in that drug business I was telling you about and it had taken just about all I could do to keep 5973
something to eat and go along with it.

By Mr. von Holst:

Q. You did sometimes, did you not, receive checks from fruit companies? A. Yes.

Q. And you would make payments by endorsing such a check—— A. I recall one.

Q. —to Judge Davis? A. One check—where does five hundred show on there?

Q. Well, let me refer you to Amici Exhibit 112. Here is a check on March 26th, 1937, for five hundred dollars. A. Yes.

5974 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. And then there is another check—or payment, rather, of June 12th, 1937, for five hundred dollars. Now, do you recall in that year that you made Judge Davis a check on the Tavares Bank for five hundred dollars and that that check was returned for insufficient funds? A. I quite sure do.

Q. Twice: you do remember that, don't you? A. Yes.

Q. And finally it cleared? A. Yes.

Q. Now,— A. But in the meantime—

5975 Q. Just let me recall this to you, because I think I can save time. Isn't it also a fact, as shown by your letter to Judge Davis about that time, that you then, in that same year, later on in the year, in the fall, you got a check from the— A. Richmond Produce Company.

Q. All right, it was a fruit company, anyhow, for five hundred dollars, and you endorsed that over to Judge Davis, isn't that right? A. Yes, sir, or either had it made out direct to him, I won't be sure which. I had more coming to him than the five hundred.

Q. At any rate, you paid Judge Davis that second five hundred dollars with a fruit company check? A. Correct.

Q. And that would be this item which Judge Davis shows
5976 on June 12, 1937, is that right? A. Yes, that is just about right.

The Reporter: You said that was twice, didn't you, Mr. von Holst?

Mr. von Holst: Yes.

By Mr. von Holst:

Q. That is the fact, isn't it, Mr. Stokley, it came back twice? A. Yes.

Q. Now, then, you identified the last time you testified Amici Exhibit 114 (letter dated March 25, 1937) in which you wrote the Judge—Judge Davis—"Inclosed find check

for 500.00 first payment on Orange Co Grove." Do you remember that? A. Yes,—what date was that, now, 1937?

Q. It was in March, 37, as shown by Judge Davis's letter to you dated March 29, 1937, (Amici Exhibit 114) where he says:

> "Your letter inclosing the check for $500 on the principal of the $4000 on your Orange County grove was received. I thank you for sending it."

So this letter was sent on a few days before Judge Davis's 5978
letter, wasn't it? A. Yes, it must have been.

Q. And somebody has penciled in March 25th, 1937. At any rate, it must have been just a few days before Judge Davis's letter of March 29, isn't that right? A. It looks so.

Q. And you testified that that was the first payment that you have made on the principal of the Orange County grove, is that right? A. Yes, sir—wrote that letter.

Q. Now, then, turning back to Amici Exhibit 112, that payment which you enclose to the Judge in your letter of March 25, 1937, (Amici Exhibit 114) is evidently this payment which Judge Davis has noted here, March 26, 1937, $500.00, isn't that right? A. Was that the check that went back? 5979

Q. Yes, sir, that is the check that went back. Now, then, you see, in this same letter just to refresh your recollection further—"I will send five hundred more as soon as I hear from my Richmond fruit." A. Correct, yes, sir.

Q. Which would make this June 12th payment of 1937 of $500.00, is that right?" A. Yes, sir.

Q. All right. Now, you will notice that on Amici Exhibit 112, before this first payment on principal on the Orange County Grove of five hundred dollars, of March 26th, 1937, there are three other items noted by Judge Davis. There is one of June 22nd, 1936, $200.00, July 7, 1936, $200.00, and February, 1937, $400.00. Now, isn't it a fact that those three

5980 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

payments totaling $800.00 were for a year's interest on the Kaufman loan? A. They wouldn't have given me credit on the four thousand here——

Q. Just answer my question. Isn't it a fact that that was interest on the Kaufman loan? A. Oh, I should say no, sir.

Q. You deny that? A. How is that?

Q. You deny that? A. I say I believe it was on my four thousand dollar payment. I haven't sense enough to believe any other way.

Q. And yet your letter of March 25, 1937 (Amici Exhibit 114) says:

5981

"Dear Judge:

"Inclosed find check for 500.00 first payment on Orange Co Grove."

Doesn't it? A. Yes.

Q. And Judge Davis's reply says:

"Your letter enclosing the check for $500 on the principal of the $4000 on your Orange County grove was received."

Now, if that was the first payment on the principal on

5982 your Orange County grove, how can these other payments of June 22nd, July 7th and February, 1937, totaling $809.00, be on the principal of the Orange County grove? Have you any explanation? A. No, I haven't. I naturally thought I was paying on my four thousand dollars, everything that was turned over to Judge Davis, and I am satisfied he give me credit for it.

Q. Now, you will notice, Mr. Stokley, that these payments totaling $800.00, of June, July, 1936, and February, 1937, according to Judge Davis's statement have been made on the principal of his loan to you, and yet your letter to him says that this five hundred dollars is the first payment on

the Orange County Grove. Have you any explanation? A. No, you would have to explain that to me.

Q. Furthermore, Mr. Stokley, if you paid $320 interest, according to this notation on Amici Exhibit 112, on February 9, 1937, one year's interest from March 10, 1936, to March 10, 1937, that would have been the first year's interest on your loan from Judge Davis, wouldn't it? Wouldn't it? A. It looks like that would figure it out, three hundred and twenty for a year's interest.

Q. Three hundred and twenty? A. On four thousand at 5984
eight per cent.

Q. Four thousand at eight per cent is three hundred and twenty? A. Yes.

Q. Whereas, if as a matter of fact before February 9, 1937, the principal of your loan to Judge Davis had been reduced by two hundred dollars on June 22, 1936, by two hundred dollars on July 7, 1936, and by four hundred dollars some time in February, 1937, there would not have been $320 interest due for that year, would there? It would have been something less. I am not asking you to calculate the interest, but you can see that it would not have been a full year's interest if those payments had been made on the principal, would it—on four thousand dollars? A. Well, the statements 5985
that they sent me, all of it was applying on my four thousand, and that is all I—all the interest I had in it was to get that paid off as quick as possible. I promised him I would.

Q. Well, you aren't answering my question. Have you any explanation to make of what to me is a perfectly evident discrepancy? I want to give you full opportunity to explain anything that you may be able to explain. A. The only—the only explanation that I have for it was that he has got these—if these dates are correct the Judge has got down there, I had—if—I was thirteen hundred dollars paid on March 26th, '37, and I borrowed it in '35.

Q. It has not escaped your attention, Mr. Stokley, that you can't get interest at eight per cent on four thousand dol-

5986 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

lars which will be divisible in amounts of $200, $200 and $400? That is not interest on four thousand at eight per cent, is it? Is it? A. No, no, it isn't.

Q. It is interest on ten thousand at eight per cent, isn't it? A. Well, then,——

Q. Just answer that "yes" or "no". Is it? A. Why,——

Mr. Harris: Well, anybody knows that.

The Witness: Anybody knows that, can figure out that.

5987 Mr. von Holst: All right.

The Witness: But what I can't get in my head was, I thought I was paying on my four thousand, and he has turned it that Judge was paying Kaufman, which I haven't any record that I paid Kaufman at those dates.

By Mr. von Holst:

Q. But you did pay those amounts to Judge Davis, didn't you? A. I did, he says I did.

Q. Well, have you any reason to doubt it? A. Not at all, because Miss Kliesh was keeping the books for me, and they said I had the principal paid down to thirteen hundred.

5988 Q. Well, you have no further explanation to make? A. What other could I make?

Q. I don't know. A. Well, I won't——

Q. I am asking you. A. Well, look, according to his own statement, please, sir, just be kind enough to tell me, all the interest that he claims has been paid as the years have gone by on the four thousand is this interest right here?

Q. That is my understanding, Mr. Stokley.

Mr. Harris: $320.

Mr. von Holst: For that year from March 10th, 1936 to March 10th, 1937.

The Witness: Great land, I paid the Judge some interest! Eight per cent gets hard, too.

Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect 5989

By the Master:

Q. Do you have any recollection now, Mr. Stokley, for what purpose you paid those sums, two hundred, two hundred, four hundred? A. Why, Judge, the only thing that mixes me up, of course, I expected all of that to be going on the four thousand, because when he let me have it he said it had to be paid as quick as possible, but the statement in the letter there, that this is my first payment on the principal, I was wrong, I didn't—I had paid before that. My wife did the writing for me. 5990

By Mr. von Holst:

Q. So do you now say that when you stated in that letter to Judge Davis, of March 25, 1937 (Amici Exhibit 114) that it was your first payment on the Orange County Grove, that you were wrong, that you had made other payments before that? A. I had sent some money before that, but I don't—does Judge say that is the first payment I sent?

Mr. Harris: No, he doesn't. That is the thing.

By Mr. von Holst: 5991

Q. The Judge says, in answering your letter:

> "Your letter enclosing the check for $500 on the principal of the $4000 on your Orange County grove was received. I thank you for sending it. You said when you heard from your fruit in Richmond you would send me another $500. That will be fine. As I understand it you told me when I was there that you would be able to pay at least $2000 or possibly $2500 this year on that $4000. About when do you think you will be able to do that?"

Now, you can finish reading the letter. He doesn't say anything about any previous payments having

5992 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

been made. He doesn't correct you in your statement that it is the first payment of principal on the four thousand dollar loan.

A. Let Judge explain it to you, gentlemen.

Q. Well, I am asking you to explain it. Do you or do you not say that you were wrong in your letter of March, 1937, to the Judge, when you say that you are enclosing five hundred dollars, first payment on Orange County Grove? Was that a true or a false statement? A. Well, with that
5993 other paid, it is bound to be wrong, because with the two hundred dollar checks each time, that was applying on my principal.

Q. Yes, but if the other payments were on the Kaufman loan, then your statement here in your letter of March 25, 1937 (Amici Exhibit 114) was right, wasn't it? Right? A. I had none—I had no intention of sending in on the Kaufman loan. As to how it was termed, I don't know.

Q. Now, Mr. Stokley, in this subpoena that was served on you prior to your attending here today, paragraph 1 calls for all correspondence, records, data, books or memoranda of account, ledgers, journals, cancelled checks, books of en-
5994 try, or copies thereof if the originals are not in your possession, showing or pertaining to payments to or for the account of or receipt by Judge J. Warren Davis of any money, securities, valuables, or commodities, as repayment in whole or in part, or as the payment of interest by Charles L. Stokley on the sum of four thousand dollars received by said Stokley from J. Warren Davis on or about March 10, 1936. Have you anything with you corresponding to,—— A. I brought

Q. —responding to that paragraph of the subpoena? A. I brought every paper, tax receipts, letters and everything that I had at home, and all the rest of it is, as you know is in the Government possession.

Charles L. Stokley—For Amici Curiae—(Recalled). 5995
—Redirect

Q. Well, responding to that particular paragraph of the subpoena you have nothing, have you? A. I have tax receipts, and so on.

Q. This paragraph, if you had listened when I read, doesn't have anything to do with tax receipts. It calls for data. Now, any document you may have showing or pertaining to payments to or for the account of or receipt by J. Warren Davis as repayment of the four thousand dollar loan, that is all that calls for. A. I brought everything that I had, and if there is anything in that that gives you any light 5996
on it, why, it is there. If I had found a cancelled check I would have brought it.

Q. Mr. Stokley, we find nothing in this batch of papers that you brought with you that corresponds to paragraph 1 of the subpoena. A. If I had had anything I would have brought it with me, because there is nothing in the world that—I don't care which way you turn the interest, if that is what you are driving at, because it is immaterial to me, just so I can get it paid off and redeem it.

Q. I am just trying to ascertain the facts, Mr. Stokley. Now, then, paragraph 2 of the subpoena calls for all correspondence, records, data, books or memoranda of account, 5997
ledgers, journals, cancelled checks, books of entry, or copies thereof if the originals are not in your possession, showing or pertaining to any payments to or for the account or received by Morgan S. Kaufman of any moneys, securities, valuables or commodities as repayment in whole or in part or as the payment of interest by Charles L. Stokley on the sum of ten thousand dollars paid by the said Morgan S. Kaufman to the Town of Mount Dora on or about November 25, 1935. A. Well, I haven't—I haven't any papers at all. You gentlemen know if I had them, why, there is nothing to do but bring them.

Q. Yes. A. My bank here, the bank gives you a statement of the checks.

5999 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. But you have nothing that you brought with you—
A. I haven't any——

Q. that responds to this? A. I haven't any cancelled checks that would bear on it at all.

Q. Or any other papers at all? A. No other papers, nothing in my possession. There are certainly some that would give light on to it, because they asked me some of these same questions at the Federal Grand Jury.

Q. Now Mr. Stokley, I refer you to your letter to Judge
5998 Davis of June 18, 1936, that you have previously identified here, and which is in evidence as Amici Exhibit 115. Now, in this letter you say:

"Dear Judge:

"Your letter to hand", and paragraph 3 of the subpoena calls upon you to produce that letter. Were you able to find it? Have you it with you?

A. You mean a letter like this?

Q. A letter from the Judge to you that you referred to in your letter to the Judge of June 18th. Do you understand me? A. Why, no. This is the letter, I haven't
6000 any——

Q. This is the letter that you wrote to the Judge. A. Yes.

Q. And in the first sentence it says, "your letter to hand." A. Well, wouldn't that be one of those letters that you have just read, where the Judge wrote me?

Q. We have never been able to find that letter, Mr. Stokley.

By Mr. Harris:

Q. Might it not be the letter of April 28th? Might it not? A. I thought it was.

Mr. Harris: I don't know, I am only asking.

The Master: What is the date of the letter to the Judge?

Mr. Harris: June 18th.

The Witness: June 18th, 1936.

Mr. Harris: There is a letter from the Judge of April 28th, little over a month.

Mr. von Holst: Which one do you mean, Mr. Harris, the letter of April 28, 1936, (Amici Exhibit 114)?

Mr. Harris: Yes. 6002

Mr. von Holst: Well, April 28th to June 18th is a bit more than three weeks, isn't it?

Mr. Harris: No, that is about a month and a half about six weeks, six or seven weeks.

The Master: Six or seven weeks.

By Mr. von Holst:

Q. It was because, Mr. Stokley, we felt there was a letter missing that had not been produced here that we called in paragraph 3 of the subpoena for you to produce this letter. Now, all I want to know from you is, when you were served with this subpoena did you or did you not find any other letter? A. No, sir, no, sir. I brought you gentlemens everything there was there and if there had been any other letter you would have a copy of it, just like you have got Judge's letter here, because it was all turned over to the Government. 6003

Q. Well, your answer is that you weren't able to find any other letter? A. Had no other letter.

Q. Paragraph 4 of the subpoena calls for a letter written to you by J. Warren Davis shortly prior to July 6th, 1936, which letter is referred to in the letter written by you to J. Warren Davis dated July 6th, 1936. You see, your letter, Amici Exhibit 116, is dated July 6th, 1936, and is addressed to Judge Davis, is it not?

6004 *Charles L. Stokley—For Amici Curiae—(Recalled).*
—Redirect

(The letter was shown to the witness.)

A. Yes.

By Mr. von Holst:

Q. And it says, "Your letter received". A. Well, that is the letter you have there, when you—when you read, before this one.

Q. No. A. Because it is after date, isn't it, it is after that, date.

6005 Q. This is July 6th. The other letter referred to a letter which you had received prior to June 18th, 1936. So there are two letters from Judge Davis to you that so far as we can tell have not been produced, and we called for them by the subpoena. Now, have you either one of them? A. I haven't any knowledge as to where they are unless the Government has them in the files.

Q. As I have stated to you, we have been through the files that the Government has and they aren't there. When you testified here previously, Mr. Stokley, reading from page 2807 of the record, [R. 13889], you testified:

6006 "I have paid about fourteen hundred dollars interest, and as to the dates, the first or second, or any payment, I couldn't swear to it. I paid five hundred at one time, I think it shows that I paid him six hundred once, and I can tell you this. . . ."

A. That is speaking about Kaufman?

Q. That is Kaufman's loan, yes, I was going to tell you that.

". . . and I can tell you this, I owe him $13,804.

"Q. At the present time?

"A. At the present time. That is interest and principal."—referring to the Kaufman loan.

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

6007

I would like you to state how you arrived at that figure of $13,804, principal and interest. A. As best of my knowledge, Wilmer and myself—Billy, as we call him—going over it, he says, "Dad, you owe Kaufman this amount", he figured it up there, and as to how he come to these figures, I don't know, unless he knew the exact amount that we were supposed to have made him in payment. He had a little book, that we spoke of, the black book, before the Grand Jury in New York, and he explained it very satisfactory. He told them that when he came home from Bucknell University to start in to work for me he had great intentions to keep a nice record, but that Dad worked him so hard he couldn't keep any books, when night came he would fall asleep. That is the only time we had to keep books.

6008

Q. Can you yourself tell us how you arrived at that figure, $13,804? A. Only by the instruction of my son.

Q. What I mean is, can you tell us now what payments were made, and when,—— A. No, sir.

Q. —which would leave that amount due? A. No, sir.

Q. When did your son make up that figure? A. I can't say that—before I came up here the last time, though.

Q. Did you get it from him before you came up the last time and testified to that figure of $13,804? A. That is my belief.

6009

Q. Well, did he show you a paper, or any schedule or document? A. Why, he was sitting at a desk and was figuring and told me what I owed.

Q. Well, did you ask him to tell you how much you owed, that you might be asked that when you came up to testify? A. I am quite sure I did.

Q. And he just told you that figure. A. That is what he told me.

Q. Well, did you carry it in your head until —— A. No, I brought it here to you gentlemen, I had a little slip of paper and I had the amount that was due Judge.

6010 *Charles L. Stokley—For Amici Curiæ—(Recalled)*
—Redirect

Q. I am talking about the Kaufman loan, now, this $13,804. You didn't have any paper that you gave us showing how you arrived at that figure. A. I had it right here. I thought I turned the slip over. It was in his figures.

Q. What records did your son use to make up this schedule which would give you that amount due, principal and interest? A. Now you got me. I don't know.

Q. When you were served with this subpoena or the previous subpoena, did you ask your son whether you had any of the documents that were called for in these subpoenas?
6011 A. Yes, sir, he comes home about each Sabbath.

Q. Now, let me ask you, first, did you ask him for them? Did you tell him—— A. I knew he didn't have them. He has a little home in Orlando, with none of my papers in it. What help he gives me is when he comes home. It is all at the desk.

Q. But he made that figure up prior to your appearance here the last time? A. Yes, sir, I couldn't have brought it without.

Q. And at that time all your papers, including the little black book, had been turned over to the Government, had they not? A. Absolutely.

6012 Q. Then what papers could he have used to arrive at that figure? A. He would have had to have known enough about it to have jotted it down, is all the way I can tell you.

Q. Well, you mean that he didn't have any papers from which he could arrive at those figures, did he? They were all in the Government's possession, weren't they? A. We have some idea as to what we owe, and Billy has better conception of it than I have. I don't know the different payments and what it would aggregate, and the dates.

Q. Did he have any documents? A. Not that I know of, that is, nothing that would be——

Q. So that he made that figure up, just remembered it in his head, and gave it to you? A. He knew very well I owed

ten thousand, and he knowed how much interest had been paid, and he knowed how much had accumulated, and he derived at those figures.

Q. He knew the dates of payment—— A. No.

Q. —of interest? A. No, no, not the dates, but the amount.

Well, then, how could he figure the interest, unless he had a notation of the dates when payments had been made on principal and interest? A. He had taken——

Q. How could he arrive at that figure, $13,804? A. He 6014
had taken banking and interest, and so on, at Bucknell. He ought to have been able to——

Mr. Harris: I understand nothing is claimed—it isn't claimed that any part of the principal has been paid, so all he would have had to do would be to deduct the interest from the total accrued interest.

Mr. von Holst: I stand corrected on that. It is true that there has been no claim made that any principal has been paid on the Kaufman loan.

Mr. Harris: So he wouldn't have to know the dates when they were paid.

Mr. von Holst: That is right, but he would have 6015
to know the amounts.

Mr. Harris: That is right, that is right.

By Mr. von Holst:

Q. Now, did he have any schedule or memorandum or notation of the amounts of interest that had been paid prior to your appearing here and testifying the last time, when you gave that figure as being due? A. I don't know of any—he never gave me any, anyway.

Mr. von Holst: Please mark these two letters as Amici Exhibit 211 and 212 for identification.

6016 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

(Letter dated April 7, 1937, from C. L. Stokley to Mr. Morgan S. Kaufman was marked Amici Exhibit 211 for Identification.)

(Letter dated May 11, 1938, from C. L. Stokley to Mr. Morgan S. Kaufman was marked Amici Exhibit 212 for Identification.)

Mr. McCullough: What is the date of them?

Mr. Poore: Can't read it.

Mr. McCullough: I can read it on my copy—

6017 April 7, '37, and May 11, '38.

By Mr. von Holst:

Q. I hand you Amici Exhibits 211 and 212 for Identification and ask you whether those two letters were written by you.

(The witness examined the letters.)

A. Yes, sir, I wrote that.

Mr. von Holst: By "that" you mean 211 for Identification?

6018 The Witness: Yes, sir. (Indicating the other letter.)

By Mr. von Holst:

Q. You wrote both of them? A. That is right.

Q. Did you write any others to Mr. Morgan Kaufman from the time that you made the loan down to the time that the investigation began? By the investigation, I don't mean this investigation, but the time that the Government first investigated your affairs. A. To the best of my knowledge, I kept in touch with him, oh, once or twice a year. You should have one where I sent him a statement as to what the fruit brought and what I—it cost me putting it up,

and so on. That was written on a sheet of paper something like that. And I wrote him one time trying to get him to throw off on the interest that was accumulating on me and it looked like it was going to be impossible for me to pay it, since I had had such bad crop years. That ought to be——

Q. So your answer is that you have written other letters than these two? A. It strikes me that these aren't worded just exactly like some letters that I wrote him. After we had a windstorm I think I wrote him about that, where I lost twenty-nine big trees, blew up in a storm, and I meant to have wrote him about it. 6020

Q. I want to state to you again that among the papers in the United States Attorney's office these were the only two letters from you to Mr. Kaufman that were in the papers, in the recent search in the United States Attorney's office. A. Well, please, sir,——

Mr. Harris: Excuse me, what was the date of those?

The Witness: One each year, it seems.

Mr. von Holst: April 7th, I think that is 1937—it could be 9—and the other is May 11, 1938.

The Witness: Isn't it a wonder that he even kept those, scribbled as poor as I did? 6021

Mr. von Holst: Do you have any record of any others, Mr. Harris?

Mr. Harris: No. I notice here, among the papers turned over to the F. B. I. agent, a check on the bank of Tavares. May 15, 1939, by C. L. Stokley to Morgan S. Kaufman,——

Mr. von Holst: That is right.

Mr. Harris: —for $600.

Mr. von Holst: That is right.

Mr. Harris: And one of these letters refers to making another payment on account of interest. And then there was a letter——

6022

The Master: What was the date of that payment?

Mr. Harris: May 15th.

The Master: '39?

Mr. Harris: '37—oh, I beg your pardon, '39.

The Master: '39.

Mr. Harris: The letter is in '37, I beg your pardon, that is right. Then there seems to be a letter of April 7, 1939, to Morgan S. Kaufman, by Mr. Stokley's son, which was turned over, mentioned in this receipt.

Mr. von Holst: Is that the one that talks about releasing part of the property?

6023

Mr. Harris: I don't know, I am looking at that list.

Mr. Poore: We obtained a copy of that at the time. Both sides have a copy of that.

Mr. Haris: Well, when you say you found none, you mean you didn't find any others than these two, and that one?

Mr. Poore: That is from his son.

Mr. von Holst: From his son, Mr. Harris. It has nothing to do with payment of the loan.

Mr. Harris: I don't know what it is.

Mr. von Holst: It asks that a certain amount be

6024

released so he can build a house on it.

Mr. Harris: Oh, I see, it was his own personal business.

Mr. von Holst: Yes.

Mr. Harris: And not Charles Stokley's.

The Master: Is there any evidence that Mr. Stokley had made a payment to Mr. Kaufman prior to April 7, 1937?

Mr. Harris: The letter says, making another.

The Master: I understand that, but I wondered if there was any evidence of a payment itself.

Charles L. Stokley—For Amici Curiae—(Recalled)
—Redirect

6025

Mr. Harris: I believe Mr. Kaufman gave some testimony to that effect, too.

Mr. von Holst: There certainly have been no checks produced other than the one in '39.

Mr. Harris: Well, there were turned over to the Special Agent check book of the Bank of Tavares, first stub February 28, 1939, and another check book, first stub April 11, 1939, and the statement, Bank of Tavares, and cancelled checks for May and June, 1939, and for March, 1939, ledgers, various ledgers, manifold order books—those all appear from this receipt to have been turned over to the Government, along with some fifty other items that are enumerated.

6026

Mr. von Holst: I have some more ledgers here to identify; but so far as letters are concerned, the only ones that we were able to discover were those two.

I think we better offer them in evidence at this time. I offer Amici Exhibits 211 and 212 for Identification, as Amici Exhibits 211 and 212.

(Letter dated April 7, 1937, from C. L. Stokley to Mr. Morgan S. Kaufman, previously marked Amici Exhibit 211 for Identification, was marked Amici Exhibit 211.)

6027

(Letter dated May 11, 1938, from C. L. Stokley to Mr. Morgan S. Kaufman, previously marked Amici Exhibit 212 for Identification, was marked Amici Exhibit 212.)

By Mr. von Holst:

Q. Now, Mr. Stokley, referring again for a moment to Amici Exhibit 209, that covers the period for expenses from September 1st, 1937, to September 1st, 1938, does it not? A. That is what he has put down there.

6028 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. Now, then, I am picking it up on these yellow ledger sheets, which I will mark in a moment, and I call your attention to the fact right now that it picks it up on September 1st, 1938, is that correct? A. Yes, sir.

Q. And is entitled "Expenses".

Mr. von Holst: Now, please mark these ledger sheets for identification as Amici Exhibit 213, these being seven pages of yellow ledger sheets.

6029 (Seven sheets entitled "Expenses", from 9-1-1938 to 6-26-1939, were marked Amici Exhibit 213 for Identification.)

By Mr. von Holst:

Q. All of them are entitled in the middle, "Expenses"? A. Yes.

(The witness spoke about the entry relating to New York Life Insurance Company.)

By Mr. von Holst:

Q. You wanted to make an explanation right off the reel. Just hold that a minute, will you, Mr. Stokley, until I can
6030 get these identified properly? Referring to these ledger sheets, Amici Exhibit 213 for Identification, will you state in whose handwriting they are, if you know? A. I should say they are in Billy's handwriting.

Q. And in what connection were they made up? Let me ask you this, are they taken from your ledger book? A. I didn't pay enough attention to the ledger book to swear to that but I am sure, almost—can I put it, I am almost sure they were?

Q. Yes, well, have you ever seen these in connection with your business down there? A. I can't say I have. I was so darned tired when night come, I never looked at them. Billy made them out.

Q. Billy made them out in connection with your business? A. That is my belief.

Q. To help you run your business? A. Yes, sir.

Q. What time did he get back from college, what year? A. He finished in 35.

Q. And during this period from 1938 on, was he helping you with the business? A. I think he worked in New York a short time, and then came on.

Q. Well, did you ask him to make up these lists of expenses in your business? A. Well, having an interest and living in with me, he naturally did it on his own free will, but like I aforestated, at the Grand Jury he told them he was ashamed of his record because he worked so hard he couldn't keep it, didn't have life enough left to keep it properly, and he got off—— 6032

Q. Were these sheets kept in connection with your business? A. Yes, sir.

Q. By your son? A. I am quite sure that is right.

Q. And purport to be the expenses incurred by your business for the period in question there, as indicated by these sheets, is that right? A. I should think so.

Q. Now, then, I think you wanted to make some explanation about this New York Life Insurance Company,—— A. Well, on the—— 6033

Q. —which is the first item on the list here. A. On the sheet where he put down plate glass insurance and life, meant life insurance, I believe he added his in, to make it come up to four hundred dollars.

Q. Do you mean that your son, Wilmer, has a policy in the New York Life Insurance Company? A. Yes.

Q. Have you any policy in that company? A. No, sir.

Q. Ever had? A. Never have.

Q. Now, I am turning to—— A. That abbreviates Citrus Culture Association, right here (indicating).

Q. Where it says C. C. C.? A. Yes.

6034 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Q. What is that abbreviation? A. Citrus Culture Association, where we men belong to it and buy our fertilizer.

Q. Citrus Culture—— A. Culture——

Q. Something wrong—Company? A. Corporative.

By Mr. Harris:

Q. Cooperative? A. Cooperative.

By Mr. von Holst:

6035

Q. Cooperative? A. Yes.

Q. Now, you will notice on the last page of this Exhibit 213 for Identification there is an item, 5-15, Morgan S. Kaufman, $600.00, isn't there? A. Yes.

Q. Now, I wish you would check through that and see if you can find any item prior thereto of any payment to Morgan S. Kaufman. I have done so myself and I have been unable to find any. I wish you would, please.

Mr. Harris: Well, will you call the Master's attention to the fact that these ledgers commence as of September 1st, 1938?

6036

Mr. von Holst: That is true, and I would also call the Master's attention to the fact that Mr. Stokley has testified that no payments were made in 1936 to Mr. Kaufman, and I also call the Master's attention to the fact that we identified this morning a schedule of expenses for 1937.——

Mr. Harris: No, September 1st, 1937.

Mr. von Holst: I was just going to give the time.

Mr. Harris: Excuse me.

Mr. von Holst: Which leaves from September 1st, 1937,—let's see, this morning's schedule was when?

Mr. Poore: September 1st, 1937, to September 1st, 1938.

Mr. van Holst: Yes, September 1st, 1937, to September 1st, 1938, and this ledger picks it up on September 1st, 1938.

Mr. Harris: So that there is left unaccounted for 1937 from January 1st to September 1st.

Mr. von Holst: That is right.

The Master: And I thought you said the schedule this morning was September 1st, 1937,——

Mr Harris: That is right.

The Master: —to September 1st, 1938.

6038

Mr. Harris: That is right.

Mr. Poore: That is right.

Mr. Harris: But there is no testimony or record covering the period from the first of January, 1937 to the first of September, 1937.

Mr. von Holst: Let's make sure of that.

The Witness: Where would the other payments —when were they made? They were made.

Mr. von Holst: Just go right through and see if you can find them there, if you will.

The Master: Well, there aren't any in the ledger, I think we all agree on that, don't we, except that one?

Mr. Harris: That is right. 6039

The Master: I looked through it. Mr. Harris says from January to September.

Mr. Poore: That is correct.

By Mr. von Holst:

Q. Well, you have checked through and you are satisfied that that is the only payment shown, isn't that correct? A. That is the only one I see here. Well, I am sure Kaufman isn't going to give me anything. Where does the other ones—I know we made other payments, sent them to him.

The Master: May I see those originals a moment, please?

6040 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

By the Master:

Q. Is this in your son's handwriting, Mr. Stokley? A. Yes, sir, that is Billy's handwriting.

Q. Was this all written up at one time? A. I couldn't say. I wouldn't think so, though. I think he more than likely at his spare time put down—there is quite some items that I recall there, in regards to some fertilizer, as I look through it, that I know has been paid.

The Master: The figures appear to be in lead pen-
6041 cil.

By the Master:

Q. Are these the original ledger sheets or was this copied from the ledger, do you know? A. No, sir, I couldn't say. I know there was a barrel of bluestone that isn't on there, twenty-two dollars, just about that time, because I injured some trees with it.

Q. Have you any books? Did you keep books during this period? A. No, sir. I keep all my bills that I pay and that is about—keep them filed.

Q. And you think your son wrote this up based on
6042 your check book and bills and receipts, and things of that sort? A. I think he put that down as a memorandum, so to keep account.

Q. And this is really the only book of any kind that you know of that was kept, is it? A. Except the book that I hired Miss Mary Linderman, as I told them, a little black book, that had all my fruit accounts in it—she is a bookkeeper for the Citrus Exchange.

Mr. Harris: I call the Master's attention to the fact that the receipt of Special Agent C. B. Winstead, dated March 10th, 1940, indicates that at least three ledgers were taken from Mr. Stokley: one a "Ledger

referred to as taken by Winstead last fall."—I am quoting: one, "S E Ledger (large)"; and one, "1 small ledger, containing customers at Va. beach".

Now, by this first item, "Ledger referred to as taken by Winstead last fall.", there appears the following in pencil notation, presumably put on by someone in either the Federal Bureau of Investigation or the United States Attorney's office: "3 pages Income 7 pages Expense (copy in work papers)", from which I would take it that possibly what has been produced here was the copy in the work papers and not the original ledger. 6044

Mr. von Holst: Of course, I don't know, Mr. Harris

Mr. Harris: I don't know, either, but that does appear on this receipt.

Mr. von Holst: That is right, that appears on that receipt. It is quite possible Wilmer made these up from those ledgers, I don't know.

Mr. Harris: Yes, I would think so, because there neither being any perforations nor any holes or those sheets, obviously they were taken either from just working sheets such as bookkeepers use—they certainly were not taken from a permanently bound book, because they would have shown evidence of being torn out, they weren't taken from a looseleaf book, because there would be holes or perforations, so they seem to me, probably—I wouldn't doubt that Wilmer made these up from the original ledgers. 6045

The Master: It appears to me it was written all at one time,——

Mr. Harris: It looks that way.

The Master: ——because the ink is just the same.

Mr. Harris: As you point out, Mr. Master——excuse me.

6046 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

The Master: I was going to say, even with the same person making the entries at different times, they would appear somewhat differently, than when they are all done at the same time.

Mr. Harris: And as you point out, the figures are all in pencil,——

The Master: Yes.

Mr. Harris: —which would be unlikely if the book were being kept from time to time in the ordinary course.

6047

By Mr. von Holst:

Q. Mr. Stokley, do you remember any occasion when Wilmer went to such records as you had and made up this statement for the Government, or for anybody else? A. No, sir, I do not. Was this made before the investigation?

Q. Well, now,—— A. I was nineteen days up there.

Q. —you see, the last date on this thing is May 11th—June 26th, 1939. That would be after the investigation began.

Mr. Harris: Well, of course, we don't know, Mr. von Holst, if these sheets do not constitute the whole ledger, we don't know what else might appear in the

6048 ledger as a whole.

Mr. von Holst: I was trying to find out from Mr. Stokley.

The Witness: Let's have the ledger, then. Why not get those papers? I will pay the express of sending them direct here.

By the Master:

Q. Well, where are they, Mr. Stokley? A. They are in Jacksonville.

By Mr. Harris:

Q. The ledgers are in Jacksonville? A. Bound to be. There is about, from what he said to me, there was thirty or

forty pounds of stuff. All my abstracts on the different property is there.

Mr. Harris: While we are on the subject, Mr. Master, I should like to mark in evidence as an exhibit offered by Universal this receipt of Special Agent C. B. Winstead, listing fifty-six items of documents taken from Mr. Stokley, which list I understand was prepared by or at the request of Mr. Winstead, and it purports to be the papers which were received with report of Special Agent C. B. Winstead dated 3-10-40 6050
at Miami, and I understand, or would assume that the notations indicated in handwriting were put on by someone connected with the Federal Government, by whom I do not know. May that be marked?

The Master: Yes, I think so.

Mr. Harris: And, of course, I don't know whether these were all the papers that were taken from Mr. Stokley or not, but, at least, it throws some light on these ledgers.

(Photostatic copy of list entitled "Papers & Miscellaneous Records of Chas. L. Stokley Received with Report of Special Agent C. B. Winstead dated 3-10-40 at Miami" was marked Universal Exhibit 38.) 6051

Mr. von Holst: Of course, if the Master please, the thing that we have felt it incumbent upon us to try to do, as Amici here, was to get before the Master all the pertinent documents. Now, we have been under this difficulty, that we examine the witness, and he said everything was turned over to the Government, then we thought if we could see what the Government had we would be able to then know from that whether there were any of these documents that were supposed to have been turned over; well, now, it seems that some

of those documents that were turned over to the United States were in turn turned over by the United States Attorney to the Income Tax Division, and that there is a lot of this stuff down at Jacksonville, according to Mr. Stokley. Perhaps we ought to see the stuff and find out whether there are any cancelled checks, whether there is any record of payments.

The Master: These matters seem to be in such confusion I really think it would be desirable to get those books if it is possible to do it.

6053 Mr. Harris: I should like at this juncture also to call the attention of the Master to the former testimony of Mr. Stokley on page 2808 [R. 1389] of the record, as follows:

"Q. Now, then, did you make any payments to Kaufman in 1937? A. Quite sure I did.

"Q. Have you anything to show whether you did or not? A. The Government has all my papers, and I believe they have cancelled checks to him at that time. They should have."

I would like to read that in the record because I

6054 called attention a while ago to the fact that there was a gap from January 1st, 1937, to September 1st, 1937, so far as the documents are concerned.

The Master: Yes.

Mr. Harris: Of course, we have Mr. Stokley's testimony as to the transactions which might have taken place during that period in 1937.

Mr. von Holst: Well, that is why we feel that it is important to find out whether among these Jacksonville papers there is anything which shows payments from Stokley to Kaufman or from Stokley to Davis during the entire period in question.

The Master: Are you entirely satisfied there is nothing in New York except what you have gotten?

Mr. von Holst: Yes, sir, Mr. Neuman, of our office, went through all those papers carefully, and Mr. Harris had a representative present.

The Master: Have you made a similar examination in Philadelphia, here, to see if by chance there is anything here?

Mr. von Holst: The office of the United States Attorney here?

The Master: Yes.

6056

Mr. von Holst: No, not that I know of. We had never any information that there was anything in his possession at all.

Mr. Harris: The Grand Jury sat here and one of the trials took place here.

The Master: Both trials.

Mr. Harris: Both trials took place here.

Mr. von Holst: Yes, they both took place here, but——

Mr. Harris: There was the Special Masters' proceeding. Was the case tried by Mr. Gahagan at both trials?

The Master: Yes.

6057

Mr. Harris: There was no representative from Washington here?

Mr. von Holst: Not that we know of.

Mr. Harris: So the Department of Justice would not have any papers?

The Master: You have examined the record before the three Masters, have you?

Mr. von Holst: We have examined the record which was taken, yes, the testimony.

The Master: Do you find any reference there to any of these documents?

6058 *Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect*

Mr. von Holst: No. We have examined the record in both criminal trials,——

The Master: Yes.

Mr. von Holst: —and haven't either found any record such as we are looking for——

The Master: Well, it seems to me that it would be desirable to have these records from Jacksonville sent up, if they do bear on this question.

Mr. von Holst: Well, at any rate, that is the only way we will ever know, Your Honor, if we have ex-
6059 hausted all possible——

The Master: Yes.

Mr. von Holst: —avenues of search.

By Mr. von Holst:

Q. Will you do that? A. The abstracts would be the heaviest item. I could have Mr. Bertrand check that and send you a list of what was taken out, which would be just the abstracts, and then send the ledgers and letters and everything.

Mr. Harris: And the black book, be sure we get the black book.

6060 Mr. von Holst: I take it we are not interested at all in having the abstracts sent up.

Mr. Harris: I am not.

By Mr. von Holst:

Q. Can you do that, Mr. Stokley? A. Yes.

Q. Take out the abstracts, we don't care about them. A. That will take off part of the weight.

Q. But don't go through anything and discard this and take the other, but send everything except the abstracts. Will you do that? A. I will have Mr. Bertrand, with an order from the Court here, I will have Mr. Bertrand help me to pack it and send it right on.

6061

Q. Mr. Bertrand has told you you can have it any time, hasn't he? A. Yes, but I had to give him an order to have it sent from New York to his office, that is, he asked me for it, he drafted it and I signed it, and they sent it right away to him, but he said don't blame him for the condition it came in.

Q. Well, will you do whatever is necessary to get that stuff here to Master White's office as soon as possible? A. I will.

Q. And if you find that Mr. Bertrand wants another request from the Master—— A. Well, I can take that with me, can't I? If it isn't needed—why, if it is needed, why I will have it.

6062

The Master: We don't know his name, do we, the officer down there?

The Witness: Internal Revenue, all I know is, I don't know his initials. I have had two or three letters from him.

The Master: I suppose we might prepare a subpoena—I don't know how—and have his name inserted after we find out what it is, possibly.

Mr. von Holst: Yes—you mean to have him bring the stuff up?

6063

The Master: Well, either that or have him send it up, if all counsel agree that that may be done.

You haven't any correspondent in Jacksonville that you could communicate with, have you, either of you?

Mr. von Holst: Not at Jacksonville.

Mr. Harris: We may have, but I don't think of anybody offhand. I would have to look it up.

Mr. von Holst: Well, if the Master please, I think I shall offer Amici Exhibit 213 for Identification.

Mr. Harris: You offer that for identification?

Mr. von Holst: I offer it in evidence as Amici 213.

Mr. Harris: Well, I am not quite satisfied with that.

6064

The Master: This is the memorandum——

Mr. von Holst: These are the ledger sheets——

The Master: ——produced——

Mr. von Holst: ——prepared by Wilmer Stokley.

The Master: I beg your pardon?

Mr. von Holst: These are the ledger sheets or the statement of expense——

The Master: Prepared by Mr. Stokley's son?

Mr. von Holst: Yes.

Mr. Harris: We don't know whether those are accurate or complete, and certainly they were not prepared in the ordinary course of business.

6065

The Master: No, but if they were prepared by Mr. Stokley's son or uncle, his direction I should think they might be evidence in connection with his testimony, don't you think so?

Mr. Harris: I think they would be binding on Mr. Stokley, but as far as we are concerned——

The Witness: What if they are incomplete? The other ledger shows some more information.

Mr. von Holst: Well, we will put in whatever your ledgers show.

Mr. Harris: Don't you think you better wait on

6066

that until we find out what those are? They don't look like original records to me, they look like something that has been taken out, taken off.

The Master: Had you thought of calling Mr. Stokley's son as a witness?

Mr. von Holst: We hadn't, until today. Of course, we haven't had time——

The Master: Mr. Stokley obviously knows very little about his accounts. His son might know a good deal more, I don't know.

Mr. Harris: I really think you ought to call him.

By Mr. von Holst:

Q. Where is Wilmer Stokley? A. Orlando, Florida—let's see, I have his address in my hotel room, it is on Concord Avenue, in Orlando, about—I can give you the exact address, I can get it.

Mr. von Holst: Well, we are prepared to call him. I don't know when we can get him, although it occurs to me it might be in order to examine these documents from Jacksonville first.

6068

Mr. Harris: I thought possibly if he were coming he might bring them up with him. Maybe we could get him here the latter part of this week, Friday.

By Mr. Harris:

Q. Do you suppose your son would come up by Friday? A. Yes, he will drop things and try to come right away.

By Mr. von Holst:

Q. Could he bring the stuff from Jacksonville? A. If you stated in the message that we will send him—that we will send him—that he must stop by and see Bertrand and bring all of my papers—except the abstracts, please, because there is no need of bringing them.

6069

Mr. von Holst: Supposing that after the adjournment today we see what we can do on the telephone.

Mr. Harris: All right.

The Master: You may be able to get the Internal Revenue Department down there.—

Mr. von Holst: Yes.

The Master: And you can explain the matter to them and tell them if they want some direct authority from me I can send it down, and we would like to have those things produced.

6070 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

Mr. von Holst: What was the Master's ruling on these ledger sheets?

The Master: Well, I think we might as well receive them, and then if they turn out to be irrelevant or incompetent we can exclude them later. It will save trouble to do it that way.

Mr. Harris: I understand I still don't need to note exceptions.

The Master: No, you don't need to note exceptions.

6071 Mr. Harris: All right, sir.

The Master: You can do so if you desire.

(Seven sheet, entitled "Expenses", from 9-1-1938 to 6-26-1939, previously marked Amici Exhibit 213 for Identification, were marked Amici Exhibit 213.)

By Mr. von Holst:

Q. Mr. Stokley, I show you a photostat of a telegram dated January 15, addressed to W. K. Stokley.

Mr. Harris: Is that Exhibit 21?

6072 Mr. von Holst: January 15, 1937.

Mr. Harris: Oh, this is a new exhibit?

Mr. von Holst: Yes.

By Mr. von Holst:

Q. Do you know whose writing that is in? A. Yes, sir. I sold a load of fruit in Norfolk and it was turned down, they refused to accept it because I wouldn't throw off a quarter a box, and I instructed W. K. Stokley to go on to Trenton, and Judge was holding court in Philadelphia when he got there but he waited and disposed of it in Trenton, a load of oranges. That is the brand they were packed under, Banjo brand, and they were U. S. 1's.

Charles L. Stokley—For Amici Curiae—(Recalled)—Redirect 6073

Q. This is your writing, is it? A. Yes, I believe it is.

By Mr. Harris:

Q. Would you mind reading the body of the telegram to us? A. Now, let me see, just a minute, gentlemen: Leaving —Leave ——

Q. Leave? A. Leave at once—Leave Norfolk at once——

Q. No, just read what you got there.

Mr. von Holst: Just read what you wrote.

The Witness: All right. 6074

Mr. Harris: Strike it out and start again.

The Witness: Trenton——

Mr. Harris: Start again.

The Witness: Leave at once Trenton stamp Banjo usones Judge will be expecting you—I had wired Judge, letter——

Mr. Harris: Wait just a minute.

Mr. von Holst: Just go on.

Mr. Harris: Finish the telegram, please.

The Witness: All right—Federal building sell there.

Mr. Harris: Close quote; is that the end of the wire? 6075

The Witness: I think so.

Mr. Harris: All right.

The Witness: I wanted some corned beef up there once, and I says, "Corn, mama"; I meant, bring my wife home and the corned beef.

By the Master:

Q. What does U. S. 1 mean?

By Mr. Harris:

Q. What does "usones" mean? A. That is our government, U. S. A's, and he didn't know what was in the head,

6076 *Charles L. Stokley—For Amici Curiae—(Recalled)*
—Redirect

it was Banjo brand, and U. S. 1 oranges, and I should have stated in there, heavy to 176, that is, the majority of the load was packed 176 size. I say, in explaining I should have added that to the wire.

Mr. von Holst: Direct examination closed.

Mr. Harris: All right, sir, may I now have those documents which I turned over to you? By the way, what did you do about this? You had him read it. You didn't mark it.

6077 Mr. von Holst: I don't propose to do anything about it. I thought there might be some significance. Apparently there is not. I didn't know what it was about.

Mr. Harris: May we indicate the telegram which Mr. von Holst presented and which was translated, that is, read, by Mr. Stokley is marked as—let's just identify it—Amici Exhibit 214 for Identification?

(Photostatic copy of telegram dated January 15, 1937, from C. L. Stokley to W. K. Stokley was marked Amici Exhibit 214 for Identification.)

6078 Mr. Harris: Mr. von Holst, do you have, or have you found or seen any other letters to or from Mrs. Eunice Cole other than——

Mr. von Holst: All I have seen is her statement.

Mr. Harris: Yes.

Mr. von Holst: You have a copy of that.

Mr. Harris: That is right.

Mr. von Holst: I haven't seen any other letters——

Mr. Harris: All right, sir.

Mr. von Holst: —to or from her.

Mr. Harris: Other than the one that was produced today from Mr. Stokley to her.

Mr. von Holst: That is right.

The Master: Have you a copy of her statement here?

Mr. von Holst: Why, yes, we have.

Mr. Harris: I don't recall it. I think I did see it.

Recross Examination by Mr. Harris:

Q. Mr. Stokley, referring to Exhibit 21 for Identification,—— A. Yes.

Q. ——what was the significance of the statement: "Judge will be expecting you Federal building sell there"? 6080
A. Well, as best I can explain that, I was trying to convey the idea to my boy—W. K.—that Judge would help him dispose of the fruit. He wanted some for Christmas, friends and self, and since it was already on this big truck he could deliver it right to Trenton and he could distribute it from there.

Q. Well, it was a little late for Christmas, wasn't it, on January 15th—or a little early, one or the other? A. Well, it looks that way, but we were sending it—he was ordering it as presents; I don't know whether it was for Christmas or——

Q. Did the Judge help him sell it? A. How is that?

Q. Did the Judge help him sell it? A. I don't know that 6081
he did. He called up some wholesale house and I think he unloaded the whole works there, since he found out it would cost so much to send each separate box by express out from there.

Q. Well, in any event, your boy sold the oranges? A. Yes, he had taken them up there, and we got more than expenses of the trip from Norfolk up there, and the extra quarter.

Q. And there was nothing in this telegram which related to any of these letters? A. No, sir.

Q. Either from Mr. Kaufman or from Judge Davis? A. No, sir.

6082 *Charles L. Stokley—For Amici Curiae—(Recalled)*
Recross

Q. And you didn't send your boy up there to talk about interest or payments on account of principal, or anything else? A. No, sir.

Q. It was solely to sell these oranges? A. Yes.

Q. Now, as I understood your testimony, you said that these three notes which were marked Universal Exhibits 17 for Identification, each in the sum of $856.92, each dated February 1, 1928, and maturing, one in one year, one in two years, and one in three years, all payable to you, and signed by G. O. Watkins,— A. Yes, Mr. Watkins was
6083 a citizen in Winter Park—

Q. Just a moment—were endorsed by you to Mrs. Eunice Cole—— A. Yes, sir.

Q. ——for collection? A. Yes, sir.

Q. Is that right? A. Correct.

Q. I show you these and ask you if the endorsement on the back is signed by you.

(Universal Exhibits 17-A, 17-B and 17-C were shown to the witness.)

A. Yes, sir.

6084 *By Mr. Harris:*

Q. That is, if that is your signature? A. Yes, sir.

Q. Well, who wrote the words, "Pay to the order of Eunice Cole" above your signature? A. You mean the writing on this one?

Q. On the other two. A. Pay to the order of Eunice Cole—I don't know whether that was done by the bank at that time or not.

Q. It doesn't look like Mrs. Cole's handwriting, does it? A. It is not, it is not.

Q. And then below your endorsement is that of Eunice Cole. Is that in her handwriting? A. Yes, yes, it is.

Charles L. Stokley—For Amici Curiae—(Recalled) 6085
Recross

Q. And on one of the notes, the one maturing on February 1st, 1929, you state:

> "For a consideration of $10.00 and other valuable considerations I hereby assign, transfer, grant and deliver to Eunice Cole the note written on this paper and the indebtedness evidenced thereby.
>
> "This 5 day of Jun"—or January, I believe that is.

A. June, I believe that is for. 6086

Q. "A. D. 1929", with your signature, is that right? A. Yes, sir.

Q. Are you sure that isn't January, or do you think it is June? A. I can't say, it might be——

Mr. Harris: I don't know.

Mr. von Holst: I don't know.

By Mr. Harris:

Q. Now, the one with the assignment on the back, which I have just read, did you give that to Mrs. Cole? A. For collection, yes, sir.

Q. Only for collection? A. Yes. 6087

Q. How about the other two? A. She collected notes before that for me.

Q. What about the other two, did you assign those? A. Oh, yes.

Q. You endorsed those for collection, too? A. Yes.

Q. Well, why did your put an assignment on one of them? A. Well, all of them were under that one assignment,——

Q. No,—— A. ——was what it was meant to be.

Q. No, no, only the—there is a difference between them. A. Well, that is our mistake.

Q. Now, just a minute. You know you transfer a note just by endorsing it, don't you? A. Yes.

6088

Q. You don't have to put an assignment on it, in order to transfer it? You know that, don't you? A. Well, no, I didn't know it.

Q. You thought you were transferring it to her when you endorsed it, didn't you? A. Yes.

Q. Didn't you give that one to Mrs. Cole? A. No, no, it wasn't given to her.

Q. All right, at any rate, you didn't give the other two to her, did you? A. No, sir, I didn't give her any of them.

6089

Q. All right. Now, you gave them to her for collection. Will you explain to us why you gave them to her for collection instead of collecting them yourself? A. I had sent this girl to school——

Q. Mrs. Cole? A. Yes, and she had worked for us and she was pretty good in an office and she did the collecting, and these notes, I thought she had probated them to herself.

Q. She had what? A. That she had taken the money herself. She had gotten a new car.

Q. I asked you why you turned them over to her to collect, instead of collecting them yourself. A. I didn't collect any of my notes.

6090

Q. You had her collect them all? A. Yes.

Q. Why? A. Because she was a good collector.

Q. Well, couldn't she collect them without their being endorsed to her? A. I don't know, we endorsed all of them—or, I endorsed all of them to her because that would give her power of attorney to collect them, didn't it?

Q. Well, it gave a power, power of attorney to get the money and possibly to keep it, too. In any event, she understood that you had not given her the proceeds of these notes? A. Surely, she did.

Q. And you asked her—let's see, the last one became due on February 1st, 1911? A. Yes.

Q. '31? '31? A. '31.

Q. And when did you think that she had appropriated the money? A. Well, some—oh, some while ago, she got——

Q. Was it about 1940, or earlier than that? A. Earlier than that, little earlier than that; about—oh, along in the spring of '39, is when she got——

Q. Well, they were all outlawed then, weren't they? A. No.

Q. What is the period down there for collecting a note after it falls due? A. I couldn't say.

Q. Six years, is it? A. I couldn't say to save my life.

Q. Well, these weren't outlawed by lapse of time? A. Would they be outlawed in this country?

Q. Oh, yes. I don't know whether they would be down there or not. Well, in any event, you got into a dispute with her over these notes? A. Yes.

Q. The way that you came to get into that dispute, you noticed her driving around in a new car? A. Yes.

Q. And you said, "Where is the money?" Hadn't you inquired in all the intervening years what had become of the money? A. Yes, and she was very impudent about it, for a man of my age.

Q. What did she say? A. Oh, well, she was—she was very dirty about it.

Q. How is that, what did she say? A. She had lost them, and if I believed she was a liar I could keep on believing it, that she had lost them, and then when she did find them, why, then she did get wrathy.

Q. And was she a good deal younger than you? A. Oh, yes, yes, she is a young woman.

Q. How old is she? A. I would say she is about forty.

Q. And you have known her since she was about fifteen, or less than that? A. Less than that, possibly.

Q. So then you wrote her this letter which you say is entirely false— A. Instead of——

6091 *Charles L. Stokley—For Amici Curiae—(Recalled)*
Recross

Q. Just a moment—which is marked Amici Exhibit 205, on December 19th, 1940? A. Yes.

Q. And you say there you were simply trying to make her feel like—— A. Thirty cents.

Q. —thirty cents, in view of the fact she had gone back on you, and you wanted her to think that you had made provision for her and her daughters? A. Yes.

Q. And you wanted her to realize what she had lost? A. Instead of abusing her, I didn't go at it in an abusive way, like she did in the letter to me, I went at it in a different
6095 way.

Q. So you made up this story to make her feel like she had lost something pretty good in tossing your friendship out of the window? A. Absolutely.

Q. And that was the sole reason? A. Yes.

Mr. Harris: I offer these notes in evidence as Universal Exhibit 17.

(Note dated February 1, 1928, from G. O. Watkins to the order of C. L. Stokley, for $856.92, previously marked Universal Exhibit 17 (A) for Identification, was marked Universal Exhibit 17.)

6096 (Note dated February 1, 1928, from G. O. Watkins to the order of C. L. Stokley, for $856.92, previously marked Universal Exhibit 17 (B) for Identification, was marked Universal Exhibit 17 (B).)

(Note dated February 1, 1928, from G. O. Watkins to the order of C. L. Stokley, for $856.92, previously marked Universal Exhibit 17 (C) for identification, was marked Universal Exhibit 17 (C).)

By Mr. Harris:

Q. Now, in connection with your dispute with Mrs. Cole you say that she reported to the income tax authorities by

an anonymous letter on the letterhead of Citrus Fruit Products, Inc., that you had received fifty-five hundred dollars from some boxes of oranges sold that company. A. I am told so.

Q. Well, you testified that she did. What do you mean, that you are told so? A. She had got one of those copies and put it on it, because it wasn't written at the office.

Q. Did you see it in the revenue agent's office? A. Let's see, how did Bertrand put it—he came to me and says, "You sold so much fruit a certain year?"

6098

And I told him, no, I didn't. So then I traced it up, and come to find out that she had been in this company's office and she had this sheet of paper with the fifty-five hundred dollars on it, and the neighbors saw it.

Q. All right, now, when did that dispute arise, before or after you wrote this phony letter of yours dated December 19, 1940? A. I think all of this, she did everything she could in the next two or three weeks.

Q. So that was done sometime in 1941? A. Yes.

Q. And it purported to be—— A. '40.

Q. What? A. Done in '40. I think.

Q. Well, this letter was dated December 19, 1940. A. Yes.

6099

Q. It was done within the next few weks? A. I had got through shipping the fruit and she had—I had got this statement, and then I went back, after I heard about that, and he told me, yes, that she had been in the office, he didn't know for what business.

Q. And was that fruit that you sold in 1940? A. Yes.

Q. And supposed to be income for 1940? A. Yes.

Q. Now, you produced this statement from Citrus Fruit Products, Inc., dated March 11th, 1942—— A. Yes, and that is my writing on there.

Q. Just a moment—entitled, Statement of Fruit Picked From February 13 to 17. What year is that, 1942? A. Same year.

6100. *Charles L. Stokley—For Amici Curiae—(Recalled)*
Recross

Q. That wouldn't indicate, that doesn't indicate that that is the correct number of boxes of oranges sold them in the year when Mrs. Cole misrepresented your income, does it? A. It was the year previous to that, then.

Q. Well, then; this doesn't mean anything, does it? A. Yes, that fruit was sold to them myself, that date that they put on it.

Q. I mean, what year was the fruit sold that is shown in this document, in what year? A. March 11th, 1942.

Q. Well, then, that isn't the stuff—— A. No.

6101 Q. —that she misrepresented, is it? A. No, March, '41, but it was——

Q. Just a minute—— so this doesn't mean anything so far as the controversy with her is concerned? A. No.

Q. This particular document—— A. No, it doesn't——

Q. —she did not misrepresent—— A. No.

Q. —did she? A. No, it was the year before that.

Q. All right, and you haven't any statement from the Citrus Fruit Products, Inc., or whatever the name of that company is, for the year when you say she misrepresented your income? You have no statement from them—— A. No.

6102 Q. —for the year when she misrepresented? A. No, I haven't a statement from them but——

Q. All right, now, just a minute. Tell me to what extent you have paid the taxes since Mr. Kaufman made you the loan in 1935 on the property conveyed to him by you. A. I have brought the tax receipts here, last year——

Q. Well, do you recall offhand? Have you paid all the taxes for '35? A. No.

Q. 1935? A. Oh, yes, yes, sir.

Q. For 1936? A. I paid up to '40. I haven't paid the year '40 on Kaufman's taxes.

Q. None of the '40 taxes? A. No.

Charles L. Stokley—For Amici Curiae—(Recalled) 6103
Recross

Q. And none of the '41 taxes A. I have some of the ity property in Mount Dora, brought the tax receipts here o show you where I paid.

Q. For what year? A. Right up to the present time hose tax receipts cover.

Q. That is right, those were rather small amounts, veren't they? A. That was the Pet Grove, we call it.

Q. Yes, so that you paid all the State, County, Town nd City taxes, whichever they may be called,—— A. Yes.

Q. —for the years 1937, 1938 and 1939? A. Yes.

Q. And you paid some taxes, city taxes,—— A. City. 6104

Q. —since then? A. Yes.

Q. Any other taxes that you paid, other than some City axes, since '39? A. No.

Q. All right. Now, did you say that today you brought with you some record from the Provident Mutual Life Insurance Company showing the amount of your insurance and the amount of the loan transactions? A. No, I went up there and got the amount. I have it in my room.

Q. Why didn't you bring it with you? A. Well, they just jotted down C. L. Stokley, the amount on a policy, and the amount of loan.

Q. Well, how much is the amount of the loan? A. 6105
Around five hundred dollars.

Q. Well, how much did you borrow? A. They said if we would call up there they could give—give the Court the correct amount.

Q. Did you borrow something from them in December, 1940, as indicated by this false letter? A. Uh-huh.

Q. How much—— A. No, it wasn't from this—it was used for fertilizer.

Q. I understand, but that letter indicates that you surrendered a policy. You say you did not surrender it, but you made a loan? A. I got a loan here.

Q. How much? A. Different transaction.

6106 *Charles L. Stokley—For Amici Curiae—(Recalled)*
Recross

Q. Well, was that in December, 1940? A. It was right —right about—it was the last of '39 or '40. I guess it was '40.

Q. And how much did you borrow? A. Some five hundred dollars.

Q. And no part of that has been repaid? A. No, sir.

Q. Have you paid any interest on the loan? A. Yes, yes, paid the interest and paid up the——

Q. Premiums? A. The premium.

Q. And have you any loan on your Union insurance
6107 policy—— A. No, sir.

Q. —of a thousand dollars? A. No, I have that entire.

Q. And you spent that five hundred dollars for fertilizer? A. Yes.

Q. If you took fertilizer out of your business there wouldn't be much left, would there? A. There certainly wouldn't, it cost me about twenty-five hundred dollars a year for fertilizer, and about twelve hundred for spray dope to make the oranges bright.

Q. I did want to ask you this. Have you had any conversation or any communications of any sort with Senator O'Mara, Mr. McCullough, Mr. Behrens or myself, or anyone
6108 representing Universal, other than that you saw us in the elevator hall this afternoon? A. None at all.

Q. And I said, "How do you do?" to you, and nobody else spoke to you? A. Yes, sir, that is correct.

Q. And you asked me where the best place—— A. To get something to eat.

Q. —to get something to eat was, and you yourself suggested Horn and Hardart and I agreed with you? A. And I haven't spoke to Mr. Kaufman and haven't been to see him.

By Mr. von Holst:

Q. How about Judge Davis? A. I haven't seen Judge Davis. He is over, I guess, at Trenton.

Charles L. Stokley—For Amici Curiae—(Recalled) 6109
—Redirect

Mr. Harris: That is all.

The Witness: I would like your permission, could I confer with Mr. Kaufman in regards to this debt while I am up here?

Mr. Harris: You better wait until after he testifies tomorrow.

The Witness: All right.

Mr. Master: Anything more, Mr. von Holst?

Mr. von Holst: I have one question.

Redirect Examination by Mr. von Holst: 6110

Q. Isn't it true that the 1936, 1937, 1938, 1939 and 1940 taxes that you referred to in cross-examination were not paid by you on this Mount Dora property until February, 1942, February last year. A. Didn't I bring those receipts to you up here?

Q. Yes. A. This last year?

Q. Right. That is a fact, isn't it? A. Why, yes.

Q. Yes. A. I paid them.

Q. Paid them last year? A. Paid them last year.

Q. Isn't that right? A. Yes. If I had had money enough I would have paid the '40.

Q. You did pay some of the '40's? A. Yes. 6111

Mr. von Holst: I would like to offer in evidence certified copies of this tax situation on the Mount Dora property.

Mr. Harris: Subject to correction we will accept those.

The Master: All right.

Mr. Harris: With the general objection.

The Master: Yes, I thought they had been offered before.

6112 *Colloquy*

Mr. von Hoist: Well, he brought some up the last time and we put in some figures, but these are certified copies and ought to show it accurately.

Mr. Harris: I wish for our benefit you would state on the record when you can just how much of the property that covers. You probably know just how much it does. Otherwise we will have to trace every one of those things down.

The Witness: Wouldn't that be helpful?

(The witness produced a paper.)

6113 Mr. Harris: Yes, Your Honor, I think that I would like to offer in evidence, if I may, a carbon copy of a letter from George J. Dykes, Clerk, to Morgan S. Kaufman, Ambassador Hotel, New York, N. Y., dated March 11th, 1940, with respect to the status of the taxes; a copy of which was sent by Mr. Dykes to Mr. Stokley.

You can let me know in the morning about that.

The Master: Any objection?

Mr. von Hoist: All right, we will take it over and see whether it jibes with whatever records we have.

The Master: Subject to correction if will be admitted.

6114 Mr. von Hoist: And these tax statements will be offered as Amici Exhibit 215 (A), (B), (C), seriatim.

Mr. Harris: Note that this does not show the payments made in 1942.

Mr. von Hoist: Which doesn't?

Mr. Harris: The letter that I have offered in evidence.

(Certified photostatic copy of carbon copy of Receipt No. 76896 R, issued February 19, 1942, to C. L. Stokley, for $125.03, was marked Amici Exhibit 215(A).)

Colloquy

6115

(Certified photostatic copy of carbon copy of Receipt No. 76898 R, issued February 19, 1942, to C. L. Stokley, for $606.36, was marked Amici Exhibit 215(B)).

(Certified photostatic copy of carbon copy of Receipt No. 76899 R, issued February 19, 1942, to C. L. Stokley, for $246.37, was marked Amici Exhibit 215(C)).

(Certified photostatic copy of carbon copy of Receipt No. 76906 R, issued February 19, 1942, to C. L. Stokley, for $36.70, was marked Amici Exhibit 215(D)). 6116

(Certified photostatic copy of carbon copy of Receipt No. 76901 R, issued February 19, 1942, to C. L. Stokley, for $200.26, was marked Amici Exhibit 215(E)).

(Carbon copy of letter dated March 11th, 1940, from Geo. J. Dykes, clerk, to Mr. Morgan S. Kauffman was marked Universal Exhibit 19).

Mr. von Holst: Should we ask Mr. Stokley to stay over until Wilmer gets here?

Mr. Harris: It is all right with me. 6117

Mr. von Holst: We would like to finish it at this time.

The Master: Why don't you see what you can do on the telephone?

(Discussion off the record.)

(Adjourned until Wednesday, March 3, 1943, at ten o'clock A. M., Eastern War Time.)

6118 **Transcript of Hearing, March 3, 1943**

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Wednesday, March 3, 1943, at 10:00 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Illinois).

6119

One of Amici Curiae.

ROBERT W. POORE, Esq. (77 West Washington Street, Chicago, Illinois)

Counsel accompanying amici curiae.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.)

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey).

JOHN R. McCULLOUGH, Esq. (100 Broadway, New York, N. Y.), representing Universal Oil Products Company

6120

Evidence on behalf of Amici Curiae (Continued):

J. WARREN DAVIS, recalled.

Redirect Examination:

Mr. von Holst: Shall we proceed?

The Master: Yes. Judge Davis has already been sworn.

By Mr. von Holst:

Q. You are the same Judge Davis who has testified previously in these proceedings? A. Yes.

Q. I would first like to direct your attention to a few dates, or one date in particular. Now, at page 2456 [R. 1200] of the record, in testifying with respect to your first meeting with Mr. Sisselle at Atlantic City, you stated that you personally first met him the latter part of April, and then the question was:

"Q. '36.'"

And then you said:

6122

"A. Whatever year it is.

"Q. In Atlantic City? A. Yes."

Now, in your letter to Stokley of April 28, 1936 (Amici Exhibit 114) you spoke of being in the Jefferson Hospital in Philadelphia for ten days with gall bladder trouble, and you go on, "but am at home now and coming along very nicely."

Now, isn't it a fact, Judge, that you were in the Philadelphia hospital, that is to say, in the Jefferson Hospital at Philadelphia, from April 15th to April 25th, 1936? A. I went there about—as I recall it—the middle of April and was there eight or ten days. The exact dates I do not have.

Q. Well, Judge, we inquired at the hospital and they said 6123
that they wouldn't give the records without your consent, but they said that the records showed that you entered the hospital April 15th, 1936, and were discharged April 25th, 1936. Now, I would like to avoid if possible subpoenaing the records and going to all that trouble. I imagine that is correct. A. So far as I know. I wouldn't be able to contradict it. Their records are doubtless true.

Q. Could we leave it this way? Would you call up the hospital, and if you find that we are wrong, let us know? Otherwise, it can stand as entering the hospital April 15th and being discharged April 25th. A. Yes, I would be perfectly willing to do that.

6124 *Colloquy*

Mr. von Holst: Is that satisfactory?

The Witness: But I may say here that I have no doubt that their records are correct.

Mr. von Holst: Yes, sir, but the only point is that they wouldn't give the records, you understand, to anyone except the patient?

The Witness: All right.

Mr. von Holst: But they did give that information.

The Witness: If Mr. White will have someone get the Jefferson Hospital on the phone I will be glad

6125 to do that now, so that I will make sure not to forget it.

The Master: Do you want to do that?

Mr. von Holst: While we are waiting for Judge Davis I might save a little time. Judge Davis testified that he applied for resignation in March, 1939, I think it was, and just to verify that—it was given entirely from his recollection—we obtained a certification from the Department of Justice giving his letter of resignation and its acceptance, and we think, in order to establish that date—it isn't in any way contradictory, but it is confirmatory of what Judge Davis

6126 testified—it might be received in evidence.

The Master: All right.

Mr. Harris: There being no other evidence on the subject, I should assume his testimony would prove the fact. I don't know why we should encumber this already voluminous record further with proof of something that is already proved and is not contradicted. We don't deny it.

The Master: Is the date exactly the same?

Mr. von Holst: Well, he didn't give the exact date.

Mr. O'Mara: His letter is dated March 23, 1939.

Mr. Harris: Well, why can't we simply state on the record——

Mr. von Holst: Sure.

Mr. Harris: —we are willing to accept the statement that Judge Davis tendered his resignation as a Circuit Judge to President Roosevelt by letter dated March 23, 1939, and we are willing to accept the statement that the President accepted his resignation under date of April 29, 1939.

Mr. von Holst: Perfectly satisfactory. 6128

(Discussion off the record.)

Mr. Harris: Mr. White, I think probably the papers offered by Mr. von Holst ought to go in the record because it does not appear that it was a resignation, but rather a retirement,——

The Master: Oh.

Mr. Harris: —and I am not familiar with the technique of that, and so——

The Master: Very well.

Mr. Harris: —I think possibly we better mark them in evidence. 6129

The Master: You withdraw any objection, and they are admitted in evidence.

Mr. von Holst: As Amici Exhibit 216.

(Certified copies of letter of application for retirement, dated March 23, 1939, to the President from Judge J. Warren Davis; and letter of acceptance dated April 29, 1939, from the President to Judge J. Warren Davis, were marked Amici Exhibit 216.)

6130 *J. Warren Davis—For Amici Curiae—(Recalled)—Redirect*

By Mr. von Holst:

Q. Judge Davis, did you verify those dates on the telephone? A. I didn't verify the dates because she didn't have the record before her.

Q. Oh. A. But I told her whatever that record was, as to my gall bladder trouble, you were at perfect liberty to have a copy of it. I told her I understood from counsel that I was admitted to the hospital on April 15, 1936, and discharged on April 25, 1936, and I thought she would find those to be the dates, but whatever the dates were, she was at perfect
6131 liberty to give a copy to counsel,—

Q. I see, thank you. A. —and she said that she would.

Q. Well, after your return from the hospital in April, 1936, did you remain at home until you wrote this letter of April 28th, 1936, Amici Exhibit 114?

(Amici Exhibit 114 was shown to the witness.)

A. I do not know whether or not I did, but my recollection is that either just before that or after that, while I was not exactly recuperating, but before I came down to court again, that I stayed around home, and went to Atlantic City and one or two other places, and it was between that, as I recall
6132 it, and May 1st that—by that I mean the 25th—between that and May 1st was the time I was in Atlantic City.

By Mr. von Holst:

Q. That is your best recollection? A. Yes, that is. And, further answering, as I recall it, my messenger drove me down to Atlantic City, just to spend a day down by the sea breezes.

Q. And your recollection is pretty definite, then, that this trip to Atlantic City was not before you entered the hospital? A. That is my recollection.

Q. It was not before? A. Yes, that is my recollection.

Q. Do you recall what day of the week it was that you were at Atlantic City? A. No, I do not.

Q. Do you recall whether it was at a weekend? A. At a weekend?

Q. Yes. A. I think it was not. I am rather positive that it was not at a weekend, because, for one reason, my messenger always went away to his home on weekends. I don't recall during that period of time that he stayed in and around Trenton during a weekend, and he drove me down.

6134

By the Master:

Q. Do you recall where you stayed when you were at Atlantic City? A. We didn't stay over in a hotel. We spent the day down in Atlantic City.

Mr. von Holst: Now, if the Master please, I think the record should show; perhaps, without the necessity of offering the letter, that Judge Davis wrote you as Special Master here on November 30, 1942, enclosing various things that were requested in Mr. Thiess' letter of November 9, 1943, addressed to Judge Davis at Trenton, and that of the material that Judge Davis turned over at that time we found nothing pertaining to the Root case except the letter of January 18, 1935, from Judge Buffington to Judges Woolley, Davis and Thompson, stating that "The following is a list of assignments of cases heard during the December and January sessions", that letter being already in evidence, so we have nothing further to offer from that material which Judge Davis turned over, but we thought that the record should show that he did turn over quite a voluminous set of papers.

6135

The Witness: May I make one statement?

The Master: Yes.

6136 *Colloquy*

Mr. von Holst: I should say also—if you will pardon me a moment—that Judge Davis turned over the argument list which showed the Root case, and aside from those two papers there was no other mention of the Root case in anything that was turned over.

Now, Judge Davis, if you will, proceed.

The Witness: Relying upon my memory alone, I thought, and still think, that I turned over to Mr. White at that time or some other time the conference memorandum that I had prepared.

Mr. Harris: That was earlier.

6137 The Witness: Was it earlier?

Mr. Poore: A previous occasion.

Mr. Harris: Because that is in evidence.

The Master: It is in evidence, yes.

The Witness: I thought I had turned it over at that time, but I am not sure.

Mr. von Holst: Well, that was produced earlier, Judge.

The Witness: Well, that must be correct.

Mr. von Holst: I must correct my previous statement to this extent, that of the material turned over by Judge Davis on the occasion in question, there is one letter that we should like to offer in evidence, that 6138 being the letter of January 15th from Judge Buffington to Judge Davis.

Mr. Harris: Well, this is a letter from Judge Buffington to both Judge Davis and Judge Thompson, dated January 15th, 1935, relating to a case involving the reorganization of the Philadelphia Company for Guaranteeing Mortgages. I don't know what the materiality is.

Mr. von Holst: Well, maybe I better state, Mr. Harris, that that refers to a conference, does it not, next Thursday,——

Mr. Harris: Yes.

Mr. von Holst: —and we thought it was material as bearing on that fact.

Mr. Harris: Oh, I see.

The Witness: What is the date of the letter, may I ask?

Mr. Harris: January 15th.

Mr. von Holst: January 15th, 19——

Mr. Harris: '35.

Mr. von Holst: '35.

Mr. McCullough: Do you know what date that was? 6140

Mr. Poore: Well, Thursday would have been the 17th.

Mr. Harris: I see, and this letter assigning it was dated the 15th.

Mr. Poore: That is correct.

(Photostatic copy of letter dated January 15, 1935, from Joseph Buffington to Hon. J. Warren Davis and Hon. J. Whitaker Thompson, was marked Amici Exhibit 217.)

The Master: Does the record show when the case mentioned in that letter was argued?

Mr. Poore: I believe the summary which we introduced shows the cases argued during December and January. I am not sure whether that is one included in those dates or not. 6141

Mr. von Holst: Could we check that later?

The Master: Yes, I don't know that it is important, but it just occurred to me.

Mr. von Holst: Well, I think it should be ascertained. If we can check that at the noon recess we will proceed with Judge Davis.

The Witness: I think, Mr. von Holst, that supplementing what I said before, when I was testifying,

6112 *J. Warren Davis—For Amici Curiæ—(Recalled)—Redirect*

that on the day that that conference was held, which took place in the morning, that I drove down here with my family and they were at the Bellevue-Stratford while the conference was going on, and as soon as that conference was over I came and got them and my car and started for Florida, and as I recall, the letter which Judge Buffington sent to me assigning certain cases was mailed to me at Mount Dora, Florida. I think that was——

Mr. von Holst: That is my recollection, Judge.

6113 The Witness: That is my recollection, and that was why it was mailed to Mount Dora, Florida, because he then knew, that day, when we were in conference, that I was on my way to Florida, and until I received that letter I wouldn't know what cases at all would be assigned to me, but I had taken some cases along, which had been assigned to me previously, of small records which I worked on while I was in Florida.

By Mr. von Holst:

Q. Judge Davis, there are two letters here that I would like to ask you about. We haven't the originals, but we have photostats. The first is a letter of February 27, 1939, 6114 signed "Bill", and on the letterhead of C. L. Stokley and son, Mount Dora, Florida.

(The letter was shown to the witness.)

Mr. Harris: What is the exhibit number?

Mr. von Holst: That has not been marked yet, Mr. Harris.

Mr. Poore: It has been identified.

Mr. von Holst: Oh, may I see this just a second? I am sorry. It is Amici Exhibit 206 for Identification.

The Witness: Yes.

Warren Davis—For Amici Curiae—(Recalled)—Redirect 6145

y Mr. von Holst:

Q. Did you receive that letter, do you recall? A. I have doubt that I did, but I have no independent recollection receiving it.

Q. Do you recognize that signature, "Bill"? A. Well, do not know the signature, but I think I know who wrote

Q. Is that Wilmer Stokley? A. Yes.

Q. Charles Stokley's son? A. I think it is.

Q. Now, I also show you Amici Exhibit 207 for Identification, —— 6146

Mr. von Holst: Mr. Harris, you better look at that first.

y Mr. von Holst:

Q. ——and ask you whether you recognize that as a py of a letter that you sent to Mr. Stokley, Charles L. tokley. A. I probably wrote this letter. I have no independent recollection of it.

Q. I refer you, Judge Davis, to Amici Exhibit 112, which the schedule of payments which you handed to us at the st session when you testified. A. Yes.

Q. Showing payments made by Charles L. Stokley on 6147 count of the four thousand dollar loan of March 10th, 36. Now, Judge, this entry on Amici Exhibit 112, March d, 1939, which says: "By credit for fruit $197.50. By sh $15.00" is a total of $212.50; and referring to Amici xhibit 206 for Identification, the item of "Total to credit interest $160", and $52.50, which is pencilled underneath at, with the words—looks like "more credit" to me, does to you, alongside? A. It looks like that.

Q. At any rate, the point I make is that the totals here those two items, $160 and $52.50, is also $212.50. Is that ct? A. That would—that looks to be correct.

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Q. Now, does that refresh your recollection that in preparing this Amici Exhibit 112 you had reference either to the letter from Bill, of February 27, 1939, in which this total credit of $212.50 is specified, or else to an entry somewhere that corresponded to the items in this letter? A. Well, the entry here of $197.50, for fruit, and by cash, $15.00, would be $212.50

Q. That is in Amici Exhibit 112? A. Yes.

Q. Yes. Now, does that have any relation to this similar total credit of $212.50 in the letter of February 27th, Amici Exhibit 206 for Identification? A. Well, I understand that this was—fifteen dollars— was cash that was paid by Bill, when he was up some time after that, or about this time.

6149

Q. By "this" you mean in Amici Exhibit 142? A. Yes, it says by cash, so they were both entered there as of March —well, the one was of March, 1939, and I assume—it is only an assumption—that that has reference to these two items, the aggregation of them.

Q. Well, is it your best belief that the $212.50 credit shown in the letter of February 27th is the same as the March 3rd entry in Amici Exhibit 112, totalling $212.50? A. Well, I assume that.

6150

Q. Well, Judge, is that an assumption that you are making now or is it a refreshed belief? A. Well, I have no independent recollection. See, my secretary kept these records, and she got them from fruit as it came in, and from letters, or any other sources, and I assume that since they are both the same, that it refers to this. Now, March 3rd, 1939, and the letter which he wrote was March—or February——

Q. February. A. —27th, 1939; now, I assume that this $197.50 plus $15.00 cash was the same item that is referred to there.

Q. In the letter? A. Yes.

Q. Now, may I ask you, referring to Amici Exhibit 207 for Identification, and to the last paragraph of that letter, which reads:

"If you will keep the record of this payment with the other payments made, when I am down there in the near future, we will go over them and make a statement of all of your payments, so there may be no misunderstanding about them in the future."—Do you recall, or does that refresh your recollection at all that you went down to Mount Dora sometime in March, or subsequent to March 3, 1939, and did make up a statement of Stokley's payments to you on the 6152
four thousand dollar loan? A. I am speaking now from recollection alone. My recollection is, and my thought is that sometime before I went down that the son, Bill, was up in New Jersey and that he got the records from my secretary at that time.

Q. Your secretary was Mrs. Kliesh? A. Miss Kliesh.

Q. Miss Kliesh? A. That is right.

Q. Have you any recollection of going over payments with either Charles Stokley or Bill Stokley, Wilmer Stokley? A. No, I have no recollection of so doing; but my recollection is that Bill went over the records which had been kept by Miss Kliesh, when he was up, and he got—and got a copy of them. 6153
I am not dead sure about that, but that is my thought, that he got a copy of the records so far as they stood at that date.

Q. And you think that was in 1939? A. Yes.

Q. Now, Judge, in compiling this Amici Exhibit 112, please state what the source of your information was for those payments. You give amounts and you give dates. A. My source of information was the account which Miss Kliesh kept in a memorandum book.

The Master: What is Amici Exhibit 112?

Mr. von Holst: I am sorry.

The Witness: Statement of payments.

6154 *J. Warren Davis—For Amici Curiae—(Recalled)—Redirect*

Mr. von Holst: Here is a copy.

The Master: That is not the statement he gave Mr. Pepper, is it?

The Witness: No, no.

Mr. Poore: It is a statement produced at this hearing, for the purposes of this hearing.

The Master: All right.

By Mr. von Holst:

Q. When was this Amici 112 compiled, Judge Davis?

6155 A. Just before I came down here, prepared for or compiled in obedience to your subpoena.

Q. And Miss Kliesh prepared it, did she? A. Yes.

Q. And she had, then, the data—— A. Yes.

Q. —from which this statement was compiled? A. She had all the data.

Q. And what does that data comprise? A. It comprises what you have here, and my bank books and my check books.

Q. Well, this is a compilation, this Amici Exhibit 112, of payments to you, is it not? A. That is right.

Q. And your check books wouldn't throw any light on that, would they? A. They would throw some light on it. When a check was sent to me by Mr. Stokley and not cashed

6156 by me, but when it went to my bank, then it would be entered on the stub—not on the stub, but on the opposite page, what the deposits were, and if there was a check from Stokley it would so state on the check book opposite the day she deposited it.

Q. In other words, your stubs of your check books show the deposits as well as the checks, in your checking accounts? A. Well, they aren't stubs, they are on the back, right opposite the checks.

Q. I see. A. When she made a deposit, for instance, Mr. von Holst, say of three hundred dollars, or three hundred and twenty-five dollars, if there was a check in that amount

from Stokley, say, one hundred and seventy five dollars—just taking the amount for illustration—that would be stated, Stokley check, $175. If there was another check from somebody else, that would be stated, or, if part of it was cash, that would be stated, and the total would aggregate the amount of the deposit.

The Master: Have you had Judge Davis's check books here?

Mr. von Holst: No, if the Master please. I am just looking to see now whether the subpoena that was originally served called for that. 6158

The Witness: I have them here today, Mr. Master.

The Master: You do?

The Witness: Yes.

By Mr. von Holst:

Q. Do you have them with you? A. I have.

By the Master:

Q. Did you ever produce them before, Judge Davis? A. I am not sure whether I brought them down before. I think I did, but they weren't called for; but whether I did or not, I do not now recall. 6159

Q. I see. Were they ever called for on other occasions when you testified? A. Well, the F. B. I. has gone over them time and again, and District Attorneys' offices have gone over the books.

Mr. von Holst: Well, paragraph 2 of the subpoena served upon Judge Davis prior to his appearance the last time he testified in these proceedings called for all records, data, books or memoranda of account, ledgers, journals, books of entry or copies thereof if the originals are not in your possession, showing or pertaining to the payment on or about March 10th,

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1936, by J. Warren Davis to Charles L. Stokley of a sum of $4000, and also showing payment to or for the account of or receipt by J. Warren Davis of any moneys, securities, valuables or commodities as repayment in whole or in part of said $4000 by Charles L. Stokley.

By Mr. von Holst:

Q. Well, Judge, if you have those books, stubs and so forth, whatever they may be, with you now, from which the
6161 data on Amici Exhibit 112 was compiled, will you produce them? A. Yes.

Q. May I see them?

(The witness produced records.)

The Witness: These are the deeds that I had here, and had here before.

Mr. von Hofst: Yes, we are not concerned with those, Judge.

The Witness: Now, this is the Stokley account.

By Mr. Harris:

Q. That is the original account kept by Miss Kliesh?
6162 A. That is right.

By Mr. von Holst:

Q. And you are showing me a booklet entitled "Property of J. Warren Davis, Personal Accounts", and page 21 thereof, is that right? A. That is right.

Q. And page 21, so far as the items are concerned, is exactly the same as Amici Exhibit 112, down to and including the entry July 3, 1912, $100? A. That is right.

Q. Is that right? A. That is right, and no payment has been made since.

J. Warren Davis—For Amici Curiae—(Recalled)—Redirect 6163

Q. Then on page 20 of this booklet you have a heading, Stokley, Charles L., March 10, 1936—Loan J. W. Davis to Charles L. Stokley, 4000.00. Payments as follows—on Interest Feb. 9, 1937—Int from March 10, 1936 to March 10, 1937 $320.00. Is that right? A. That is right.

Q. And that is the same, that is to say, that last entry beginning February 9th is the same as the last entry appearing upon Amici Exhibit 112, is it not? A. That is right. Now, then—

Q. Now, Judge, have you any knowledge as to when these entries were made? A. I assume that they were made at the 6164
time that the dates that they bear.

Q. In whose handwriting are they? A. Miss Kliesh's. You see, this whole thing is in her handwriting.

By Mr. Harris:

Q. Well, there is a little notation in pencil on top of page 21. Is that in Miss Kliesh's handwriting? A. Yes.

Mr. Harris: We might read that into the record.

Mr. von Holst: The notation which Mr. Harris has referred to is, as I read it:

"Some dates given below may not be exact, but are as 6165
given to me by the Judge, often after he had returned from Florida."

By Mr. von Holst:

Q. That is in Miss Kliesh's handwriting, is it? A. That is right. Now, for instance, here, the third item on here is an item of $100.00. As I recall this, that was a payment made to me in February in cash when I was in Florida, but just what date it was made, when I came back and gave her the notation, I do not recall, so there is no date except the month of February.

6166 *J. Warren Davis—For Amici Curiae—(Recalled)—Redirect*

By Mr. Harris:

Q. February, 1937? A. That is right, and that is what she is referring to by not being the exact date, but I told her he paid me while I was down there.

By the Master:

Q. That payment was made in cash? A. Yes, that is my recollection, and that accounts for the fact that there is no date following the February.

6167 *By Mr. von Holst:*

Q. Well, now, let's go to the first item on this page 21, which likewise, of course, will be the first item on Amici Exhibit 112, June 22, 1936, $200.00. Now, have you any other document with you that shows anything about when that payment was made, or—— A. No, I have not.

Q. You have no check stub or anything of that sort? A. No, I have not.

Q. Yes. A. And likewise with the next one.

Q. You have nothing other than this book as to the first two items here? A. That is right.

Q. Is that right? A. That is right.

6168 Q. Now, how about the third item, February, 1937, have you any other document of any kind whatsoever that pertains to that four hundred dollar payment in February, 1937? A. No, I have not, because that was paid in cash.

Q. Do you recall the circumstances of that payment which you say was made in cash? A. My recollection is—more or less faint—that that was paid when I was in Florida, sitting on Mr. Stokley's front porch.

Q. And Mr. Stokley had a bank account at that time, did he not, in the Tavares Bank? A. I assume that he did. I never went into his bank account.

Q. Was that—— A. I do not now recall on what bank any check that he sent at any time was drawn.

Q. Do you recall any other payments having been made in cash except that one?

Mr. Harris: You mean except the third item there?

Mr. von Holst: Yes, sir, except the third item, February, 1937, $400.00.

A. Offhand, I wouldn't be surprised if the one made on February 28, 1938 was cash payment, but about that I am not 6170
sure.

By Mr. von Holst:

Q. That is a four hundred dollar item? A. Yes. I am saying that simply from the date, because I was down there that winter, and when I was there, convenient to him, why, he would make the payment in cash.

Q. There is one here that is noted in cash, $15.00. A. Yes, that was paid by his son when he was up in New Jersey.

Q. But as I understand it, aside from this item of February, 1937, you have no definite recollection of any others being made in cash? A. Not at this time. 6171

By Mr. Harris:

Q. What do those T.T.'s mean? A. That shows the bank in which the deposits were made.

Q. Oh, I see, Trenton Trust.

By Mr. von Holst:

Q. Is that Trenton Trust Company? A. That is right.

Q. Now, then, Judge Davis, passing to the next item, of March 26, 1937, $500.00, have you any other writing or document of any kind whatsoever that refers to that payment?

6172 *J. Warren Davis—For Amici Curiae—(Recalled)—Redirect*

A. I think that this check book and bank book both refer to that. I will see. What was the date there, Mister?

Q. March 26th, 1937, $500.00. A. March 26th, 1937—yes, as I understand this bank book on the Trenton Trust Company, under date April 1st, 1937: there is a deposit of $788.88, that comprised the Stokley check of $500.00, with two or three other items—and maybe I can find that in this book.

By Mr. Harris:

Q. In the check book? A. In the check book. I did not
6173 handle these and it is a little difficult for me to know just where the things were.

Here is a check, Stokley check, $500.00, Bank of Manhattan, $85.13, Public National Bank, $161.25, Guaranty Trust Company, $30.00, Bankers Trust Company, $12.50. As I understand it, they aggregate—they aggregate, there it is, $788.88, and this is the deposit entered in the bank book on April 1st, 1937.

By Mr. von Holst:

Q. You have before you the deposit book of the Trenton Trust Company, have you? A. That is right.

Q. And you find there that entry of a deposit of $788.88?
6174 A. That is right.

Q. And you find in your check book of the Trenton——
A: Trust Company.

Q. —Trust Company a longhand entry—by the way, in whose writing are these? A. Miss Kliesh's.

Q. —showing at the top, "Deposit $788.88, consists of:", and then the entries that you previously read? A. That is right.

Q. Now, this entry in the bank book here is not dated. Have you any way of showing what date that entry was? A. Yes, it is dated 4-1-1937.

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Q. That is on the opposite page. A. Yes, April 1st.

Q. April 1st, 1937? A. That is right.

Q. Do you recall that that check of Stokley's for five hundred dollars was returned twice for insufficient funds? A. There was one check, one five hundred dollar check, and I think that this was the one. Now, just wait one minute.

Q. It finally cleared, didn't it? A. It finally cleared—I say "finally"; you see here, on the second page from that, a deduction from my bank balance of $501.50.

Q. Yes. A. The dollar and a half was, I assume, for——

By Mr. Harris: 6176

Q. Protest fees? A. Protest fees.

Mr. von Holst: Yes.

The Witness: Check, Stokley check, $500; that was the check that came back, insufficient funds.

Mr. von Holst: Yes.

By Mr. von Holst:

Q. Now, then, Judge, if we can pass to the next item here, June 12th, 1937,—and I would like to refresh your recollection, on the possibility it may save time—do you recall that that second five hundred dollar check was a check 6177
that Stokley endorsed to you, that is to say, a check payable to Stokley's order, by some fruit company——

Mr. Harris: Richmond Produce Company.

Mr. von Holst: Richmond Products Company?

Mr. Harris: Produce.

Mr. von Holst: Produce Company.

By Mr. von Holst:

Q. —and that he endorsed over to you? A. There was some check that he endorsed over to me and I am inclined to think that this was the check.

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Q. You see, if that were the case it would show in your deposit book, I assume? A. Yes.

Q. You might look and see. A. Would show in my deposit book that it was a check from somebody else?

Q. No, no, but that amount would show, would it not, in your deposit book? A. Yes. Here it is, here it is, June 14th, $500.00.

By Mr. Harris:

Q. That is from the deposit book? A. From the deposit
6179 book.

By Mr. von Holst:

Q. Yes, and that would correspond to the item on Amici Exhibit 112 and in your ledger book here of June 12th, 1937, $500.00, is that right? A. That is right.

Q. Now, you said that there was one check that was endorsed by Stokley to you of the fruit company. Now, prior to that time were there any checks that he had endorsed over to you? A. If so, I do not recall them, and I assume that this is the check that he endorsed over to me.

Q. Yes. A. I think it was for $500.00.

6180 Q. Yes. A. But it had no real significance, and I just passingly remember there was such a check, and I assume that this is it.

Q. And is it your best recollection that was the only check of that kind that had been endorsed to you by Stokely? A. The only one that I recall.

Q. Now, then, Judge, if we can pass to the next one, August 1st, 1937, $200.00. A. August 1st, 1937. It is down here somewhere. I do not see one of August 1st, 1937.

Q. It might not have been on the 1st, Judge. Could it have been—— A. Well, I see one, I see one here of July 9, 1937, of $200.00.

(The witness indicated an entry in a deposit book.)

Mr. Harris: It might appear in your check book.

The Witness: Well, let me see where this goes, now.

By Mr. von Holst:

Q. Judge Davis, may I point your attention to this? Here you have an entry on the inside of the folder of your check book,—— A. That is right. 6182

Q. —which says August 4th, 1937, $200.00, Stokley. A. Yes, now, wait one minute—these aggregate $1,895—let me see,——

Mr. Harris: I think those checks only aggregate $285.38.

The Witness: Here we are, $285.38. That is, that check, with these others, aggregate $285.38.

By Mr. von Holst:

Q. And that is a deposit on August 4, 1937, in the Trenton Trust Company? A. Yes, 6183

Q. So that deposit of August 4 in the sum of $285.38 identifies this entry in your account book on page 21, August 1st, 1937, $200.00, does it not? A. That is right.

Q. And in this account book we have three entries, March 26, 1937, of $500.00, June 12th, 1937, for $500.00, August 1st, 1937, for $200.00, and all of which in the account book are preceded by the letters "T.T.", which you say means the Trenton Trust Company? A. That is right.

Q. Judge, referring to the longhand notation on the inside of the cover of your check book here in the Trenton Trust Company, do you know when these longhand entries

6184 *J. Warren Davis—For Amici Curiae—(Recalled)—Redirect*

were made? A. Personally, I do not, but I assume that they were made on the date of the deposits.

Q. And in whose writing are they? A. Miss Kliesh's.

Q. Now, Judge, I call your attention to the fact that these entries on the inside of your check book in the Trenton Trust Company pertain just to deposits where part of each deposit is made up of a Stokley check, is that right?

The Witness: Will you read that question?

(The question was repeated by the reporter as
6185 follows:

Q. Now Judge, I call your attention to the fact that these entries on the inside of your check book in the Trenton Trust Company pertain just to deposits where part of each deposit is made up of a Stokley check, is that right?")

Mr. von Holst: No, strike that question. I see I am wrong.

By Mr. von Holst:

Q. But the first entry on the inside of your check book is 6-14-37, $500.00, Stokley, is that right? A. That is right.

6186 Q. Now, before that there is $852.09, but that is not identified in any way, is it? A. That is a balance.

Q. That is a balance, all right. A. Yes, that was brought over from another book to this one.

Q. From another check book? A. That is right.

Q. What is the earliest date in this check book? A. 7-28-37.

By Mr. Harris:

Q. That is the earliest check drawn? A. That is the earliest check.

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By Mr. von Holst:

Q. Well, you haven't any checks earlier than that in this book, have you? A. None that were drawn out earlier than that.

Q. Well, have you got an earlier check book than this? A. One that I was just showing you a while ago.

Q. Oh, I see, all right.

By Mr. Harris:

Q. Well, may I look at this just a minute, Judge? A. 6188
Yes.

Q. I think the reason you will find those entries on the cover is because that was the first page. A. That was the first page.

Q. And there was no place to make these entries. A. You will find in the subsequent pages that the deposits are put on the back of the check stubs, but there was no sheet——

By Mr. von Holst:

Q. Is that the explanation? A. That is right.

6189

Mr. Harris: I know that is so because I remember doing it myself.

By Mr. von Holst:

Q. Now, then, if we can come to this payment of February 28th, 1938, of $400.00—— A. Well, let me see if I can find that in any book. What is the date of that, Mister?

Mr. McCullough: February 28th.

Mr. von Holst: February 28th, 1938, $400.00.

6190 *J. Warren Davis—For Amici Curiae—(Recalled)—Redirect*

The Witness: February 28th, 1938—I do not see any evidence of it in either of these books, which bears out my thought that it was a payment in cash when I was down at Stokley's, on the front porch.

By Mr. von Holst:

Q. Well, that explanation you gave of the February, 1937, entry,—— A. That is right.

Q. —as I recall. A. No,—that was on the front porch, yes.

6191

Q. Now we are talking about February 28, 1938, four hundred. A. Yes.

The Master: I think he did say that he wouldn't be surprised——

Mr. von Holst: That is right.

The Master: —if he found that had also been paid in cash.

Mr. von Holst: That is correct.

The Witness: Yes.

By Mr. von Holst:

6192

Q. But you did not identify this February 28th, 1938, as a payment made on the front porch by Stokley—— A. No.

Q. —concerning which you had any definite recollection. A. It was the other one.

Q. It was the other one? A. That is right.

Mr. Harris: This is '38, Judge.

The Witness: Yes. No, I find—first, let me look in the other book, before I discard it. I don't find it in this book.

By Mr. Harris:

Q. Did you look in this book (indicating)? A. I will look in that in a minute.

I find no record in the Trenton Trust Company, either in the bank book or in the check books. Now, I will look in the Broad Street bank book.

I do not see any deposit of that $400.00 in any of the bank deposit books.

By Mr. von Holst:

Q. By "that deposit"—— A. I will now look in the 6194
Broad Street Bank—or check book, to see if I can find it.

Q. In your statement by "that deposit", you meant the deposit of February 28th, 1938, $400.00? A. That is right. The book, the check book from the Broad Street National Bank that I have brought begins with March 5th, 1941, which leads me to conclude that it is not in this book—I mean, it was not in any Broad Street book, and that it was paid in cash, as I first supposed, when I was in Florida.

I am handling these books now for the first three or four times, but when I go back I will take these books and this deposit and show it to Miss Kliesh and ask if she can identify this deposit anywhere, and if she can I will immediately notify Mr. White—or you, whichever you want, and will iden- 6195
tify it.

Q. At any rate, as far as you now know, you have no other record whatsoever of this February 28th, 1938, payment for $400.00 other than appears in this book entitled "Personal Accounts", on page 21? A. That is right.

Q. Judge, I don't know whether I asked you this or not, but it would appear to me from the ink and the nature of the entries on page 21 of this book that down to March 3,—— A. '39?

Q. —'39, the entries were made at about the same time and that after that they were made probably as they oc-

curred. Would you have any knowledge of that? A. I wouldn't have any knowledge of that, but I do not believe it to be the fact.

Q. You don't? A. No, sir.

The Master: May I see that book?

By the Master:

Q. Is this a private ledger or a private account book, is that it? A. Well, it is a memorandum book which I kept in my office. I suppose to that extent it would be private.

6197

By Mr. Harris:

Q. At any rate, it was a personal ledger? A. Personal ledger.

By the Master:

Sort of a memorandum book? A. Exactly.

Mr. Harris: It has a title on the outside, Mr. White.

The Master: Yes.

6198 *By Mr. von Holst:*

Q. Are those the only two pages in this book that refer to Stokley in any way? A. Yes, sir, no other pages refer to Stokley at all.

By the Master:

Q. You think you probably did not deposit the four hundred dollars you got in cash from Mr. Stokley? A. I think I probably did not, Mr. White.

Q. That may have been some of the money you put in your safe deposit box, which you referred to previously? A. Well, either that, or money that I spent.

Q. Spent? A. In ordinary expenses.

By Mr. Harris:

Q. After all, you were away on a vacation? A. I was on a vacation.

The Master: In Florida.

The Witness: In Florida. That is my best guess.

By Mr. von Holst:

Q. Judge, in your explanations this morning you have pointed out in your check books of the Trenton Trust Company—of which you have two here, I believe, have you not? 6200
A. Yes.

Q. —your custom of noting on the back of the—what is it, the back of the stub? A. Yes.

Mr. Harris: Check stubs.

The Witness: Back of the check stubs.

By Mr. von Holst:

Q. The detail—— A. Of the deposits.

Q. —of the deposits. Now, you had that practice, I assume, in 1936? A. That has always been the practice in my office so far as I know or have any information. I think 6201
you may take any old book fifteen years ago—well, I don't have it back of '35, but any book from that date until now and you will find that same practice right straight through.

Q. Well, Judge, have you any explanation as to why these first three entries shown on page 21 of your account book are not broken down or revealed in any way on the 1936 check stubs? A. Yes, I have of the third one, I think that was paid in cash and there was no need of breaking that down.

Q. Yes. A. It was never deposited. Now, the other two, I do not know whether or not those were just cashed some-

time, when I would have it, just cash it, as I do occasionally, without its going through a bank account, or not. I am giving you all that I have.

Q. Yes, sir. A. For instance, I can illustrate that. My salary check came through the other day. I didn't——

Q. Judge,—— A. Didn't have a check book and I wanted —bank deposit book—and I wanted considerable of that to spend, and I just went to the window and had the cash given to me, it never went through the check book, just as an illustration of what was done now and then. That wouldn't
6203 appear in your check book nor in your deposit book.

By Mr. Harris:

Q. When did your daughter marry? Was it sometime in 1936? A. Yes.

Q. After June? A. Yes, August 22, 1936.

By Mr. von Holst:

Q. Judge, have you any letters of transmittal accompanying any of these payments appearing on 21 of your account book, or appearing on Amici Exhibit 112, other than those that you may have already produced here? A. I do
6204 not have any. I do not know whether they—because I do not have them, or do not have copies of them—I do not know whether they reflect any of them or not. I cannot tell you that. My letters and all of the material which I had in my office was submitted to Mr. John M. Harlan when the investigation of me was going on in New York. My information is that they were submitted to the F. B. I. and the District Attorney and copies or photostatic copies of those letters, or some of them—how many I do not know—were given to the District Attorney in New York. When the investigation shifted to Pennsylvania I went to Mr. Harlan's office, parked my car outside, and got all the exhibits, sup-

posedly, that I had taken to him, or that he had taken from my office—among those exhibits I assume were all of Stokley's letters and the photostatic copies—and brought them down here to Mr. William A. Gray's office.

After the trials were over here—and for probably a year, a good long time anyway—I came down to Mr. Gray's office and got a box of exhibits. He asked me once if it would be all right to permit the United States Attorney here, or Special Assistant to the United States Attorney, whoever was conducting those cases, to have copies of all the exhibits, and I told him, yes. Now, I cannot find a single 6206
photostatic copy of any letter that I had. I have applied within the last few days to Mr. Gray's office, and he said, "No, we think we sent them in your folder to you." His man, Lester—I don't know what his last name is, you may know, Mr. White, in Mr. Gray's office, who seems to be his confidential man—said, "I remember, as I recall it, putting them in a folder and they went back with your exhibits", or words to that effect, but the exhibits that were in court did not come back for some time afterward, they came in a separate envelope sent by Mr. Gray, and none of the Stokley letters, none of the photostatic copies other than those I gave you, are in my possession, and I cannot find them. They have been bumped around from pillar to post for three 6207
or four years, and some of them, I don't know where they are, but I have given you all that I have and can find.

Now, then, in obedience to your subpoena, I have found these two letters that I couldn't find before, or didn't, and one of them is from Stokley, February 6th, 1941:

> "I shipped you the other day two boxes of oranges. Please credit my account with $5.00. I truly hope you enjoy them. They are very good. Should you need any more . . ."

and so forth: nothing there. Now, that was dated February 6, 1941.

February 19th, 1941, I said:

"Dear Charlie:

"We received the fruit which you sent and it was very good. I have credited your account with $5.00 for the two boxes which you sent . . .",

and so forth.

Q. And those are the only letters that you have been able to——

6209 A. Now, another copy, Mister, a letter, January 14th:

"Enclosed you will find——

Q. What year, 1941? A. 1941.

"Enclosed you will find check for $10.47 in payment of the express on the fruit you sent for me which you paid. I have credited you on your indebtedness to me with 17 boxes at $2.00 a box, or $34.00."

Now, that is reflected here on January 7, 1941, $34.00, seventeen boxes.

Q. That is on page 21 of your—— A. That is right.

6210 Q. ——account book? A. Yes.

Q. And also on Amici Exhibit 112? A. I think you will find also that in my check book and bank book——

Q. Well, unless you want to put in something about that, Judge, it is all right as far as we are concerned. A. All right.

Q. $34.00. A. All right.

Q. No need of anything further on that. A. All right.

Q. Now, did you ever get that box from Mr. Gray which had all your Stokley letters in it? A. Yes, I did.

Q. You did get that? A. Yes, I did.

Q. And it was from that that you brought the correspondence in the last time—— A. That is right.

Q. —that you testified? A. I have gone over it piece by piece two or three times since. I did in your former subpoena, and I have done it three times since I got your last subpoena.

Q. So that every letter which you have from Stokley pertaining to the matter in question, that is to say, the four thousand dollar loan, has been produced? A. Yes, and every copy.

Q. And every copy? A. My letters referring to it, and 6212
I cannot, Mr. von Holst, find a single photostatic copy, and I know Mr. Harlan photostated all of those letters, and I can't find a single photostatic copy, and I didn't know whether you have them or not in the number of letters I brought to you. They have not been returned to me. I presume they are in Mr. White's possession, or yours.

Q. The letters have not been returned to you yet? A. No.

Q. For photostating? A. No. I do not know whether or not the letters which I brought down here were original letters of Stokley's or photostatic copies, but neither of them has been returned to me, neither original letters nor photostatic copies. 6213

Q. Now, Judge, among the correspondence that you turned over to us the last time you testified was this letter—it is Amici Exhibit 114, among Amici Exhibit 114, from Stokley to you, and the letter itself was undated, somebody has put in a pencil date, 3/25/37, but we can fix the date, I think, Judge, by your letter which is a carbon copy of the letter that you wrote to Stokley on March 29, 1937, where you say to Stokley,

> "Your letter inclosing the check for $500 on the principal of the $4000 on your Orange County grove was received.",

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so this letter from Stokley which is undated, which enclosed $500 was answered by you on March 29, 1937, which would fix the date of this Stokley letter to you as reasonably prior to March 29th, would it not? A. That would be a natural inference.

Q. Now, Stokley says to you,

"Inclosed find check for 500.00 first payment on Orange Co. Grove."

Now, that Orange County grove is the property which Stok-
6215 ley conveyed to you to secure the four thousand dollar loan, is it not? A. Part of the property.

Q. Yes. A. He secured that loan by a grove in Orange County, not far from Mount Dora, and another grove, smaller, in Lake County, Mount Dora, and by a number—seven or eight—of lots in Orlando, Florida.

Q. Now, referring—— A. And so whether he is allocating or breaking up any of these payments on any individual properties that he wants applied, I don't know.

Q. Well, when he speaks of,

"Inclosed find check for 500.00 first payment on Orange Co. Grove,",

6216 he is referring to the four thousand dollar loan, isn't he? A. Doubtless.

Q. And that five hundred dollars is this March 26th item shown on Exhibit 112, and likewise in your book,—— A. yes.

Q. —for five hundred dollars, is it not? A. I would think so.

Q. That is the check that came back—— A. Yes, I assume——

Q. —twice? A. I assume it is.

Q. Well, you notice that he says that this is the first payment on the Orange County grove? A. Yes.

Q. Your letter in reply says:

"Your letter inclosing the check for $500 on the principal of the $4000 on your Orange County grove was received." A. Yes.

Q. Which sufficiently identifies the payment, does it not, as being on the four thousand dollar loan? A. I would think so.

Q. Now, if you will read the remainder of that letter to yourself, I would call your attention to the fact that you in no wise correct Mr. Stokley's statement that this is the first 6218
payment on the Orange County grove.

(The witness examined the letter.)

A. Yes.

By Mr. von Holst:

Q. You have finished reading the letter? A. Yes.

Q. And it is true from your letter that this five hundred dollars was to be applied on the principal of the four thousand dollar loan? A. Well, I applied all the payments on the principal with the exception of that $320 which was specifically stated it was for interest. 6219

Q. Well, now, coming back to Amici Exhibit 112, according to this list of payments that appear on this exhibit and likewise in your personal accounts, there were three previous payments, one on June 22nd, for $200, one on July 7th for $200—1936, both 1936—for $200, and one in February, 1937, for $400, all of which, according to Amici Exhibit 112, are applied on the principal of the four thousand dollar loan, is that right? A. That is right.

Q. Well, there seems to be a discrepancy between that statement in Stokley's letter to you, dated March 25, 1937 (Amici Exhibit 114), and your confirmation, at least of the

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fact that it was a five hundred dollar payment on the principal of the four thousand dollar loan, and no correction on your part of his statement that it was the first payment, and the fact that on your Amici Exhibit 112, or in your book from which Amici Exhibit 112 was prepared, there appear to have been three prior payments to the payment of March 26, 1937, of five hundred dollars, which Stokley said was the first payment, A. That is right.

Q. Now, can you explain that discrepancy? A. No, I don't know why he put that in. I don't know whether I noticed it or not, but I knew the payments—I knew he had
6221 been given credit for them as and when they came in and whether I noticed that or not I do not know, and whether or not he thought some of his payments were on his lots which he wanted me to release once in a while——

Q. What lots? A. Lots in Mount Dora——or, in Orlando, which were included in his conveyance for security. I don't know how he allocated his different payments, but I didn't distinguish one payment from another. All the payments were on his indebtedness, and whether I noticed that or whether I did not, I do not now recall, and why it was put in there I do not now recall. I perfectly well knew that I had had payments before that, but what the payments
6222 were before that I wouldn't have known unless I had gone to this book and found out what they were.

Q. Judge Davis, referring again to Amici Exhibit 112, at the bottom of the page it says:

> "On Feb. 9, 1937 Mr. Stokley paid $320.00 for interest from March 10, 1936 to March 10, 1937."

Now, $320.00 is one year's interest on four thousand dollars at eight per cent, is it not? A. Well, if you say so, I assume it is. I am no mathematician and can't figure it hurriedly, but if you say it is,——

Q. Well,—— A. —I assume that it is.

Q. —eight times—— A. Anyway, my clerk would know what is was.

Q. Well, we can agree on that, can't we? A. Yes.

Q. Eight times four is thirty-two, and $320 on $4000? A. Yes, I think that is correct, Mr. von Holst.

Q. Well, now, if as a matter of fact these payments had been made by Stokley on the principal of the four thousand dollar loan, in 1936, one on June 22, 1936, $200.00, and the other on July 7, 1936, $200.00, there would not have been $320.00 due on—— A. $4000.

Q. —$4000 from March 10, 1936 to March 10, 1937? A. That is right. 6224

Q. Can you explain what appears to be a discrepancy there? A. Yes, I think I can. Stokley was paying good interest and will pay good interest, eight per cent. I am not dead sure when, or if at all, I told Stokley that I was applying these payments to principal and not to interest. He knew he had made certain payments, but how I had applied them he did not know, and I applied all of them to principal, and so when he wrote this letter and sent this check he would naturally say that is one year's interest.

Q. Are you suggesting that Stokley sent in payments of $200.00 on June 22, 1936 and $200.00 on July 7, 1936 as in his view interest payments on the four thousand dollar loan? 6225
A. I don't know, but when they came in I know how I applied them.

Q. It is obvious—— A. And I do not know whether any of the other letters in which he sent any checks state whether they are on interest or on principal, but I have applied them all on principal.

Q. Except this—— A. Except this one check which specifically stated that that was on interest.

Q. I would also call your attention, Judge Davis, to the fact that the first three entries here on 112, totalling $800.00, are exactly one year's interest on $10,000 at eight per cent. A. That might—that may be. I haven't figured that, either.

Q. Do you think it is possible that Stokley was sending you his interest on the Kaufman loan the first year? A. It is possible, but if he didn't tell me that that was interest to Kaufman and expected me to hand it over to Kaufman I would apply it just as I did.

By the Master:

Q. Well, you did not, as a matter of fact, pay anything to Mr. Kaufman, did you? A. No, I did not, Mr. White. Whatever Kaufman has gotten from Stokley he got directly
6227 from Stokley and not from me, and I haven't kept track of what he has paid to Kaufman, only as I have heard it here and there in the trials.

Q. Is there anything—— A. Because the property was adequate for all that Stokley—I mean, all that Kaufman had in it, with interest, and that was a matter between him and Kaufman.

The Master: Is there anything in the memorandum book that Judge Davis produced which identifies what these payments are, other than that they came from Stokley?

The Witness: No, sir.

The Master: No?

6228

The Witness: Only this one payment, which was designated for interest.

Mr. von Holst: The memorandum book is, so far as the entries are concerned, exactly the same as Exhibit 112 that you have before you.

The Master: Simply payments made by Stokley, without indicating whether interest or principal, or on account of what?

The Witness: No, sir.

Mr. Harris: Well, they all apply, in the memorandum book, they all apply to principal with the exception of $320.

Mr. Poore: That is correct.

Mr. von Holst: That is to say, the memorandum book shows the following payments have been made on principal,——

The Master: Yes.

Mr. von Holst: —and then the memorandum book also shows, on the page opposite page 21, it says on February 9th, 1937, Mr. Stokley paid $320.00 for interest from March 10th, 1936 to March 10th, 1937.

The Master: Did Judge Davis say when that memorandum book was prepared?

6230

Mr. von Holst: I will ask.

The Master: I notice it says, "The following payments have been made on principal."

Mr. Harris: Well, that is not an exact copy of the memorandum book. Here is the memorandum book itself, on pages 20 and 21.

(The book was shown to the Master.)

Mr. Harris: Page 20 shows the amount of the loan, the date of the loan, and this payment on account of interest. Those were all applied on principal, you see. Some of these he identified from his check books as having been deposited. And then did you read what 6231
Miss Kliesh wrote up there?

The Master: Yes, I did.

By Mr. von Holst:

Q. Judge Davis, I would like to call your attention to a letter, Amici Exhibit 115, of June 18th, 1936,——

Mr. Harris: What page of the record is that on? What was the date of the letter?

Mr. von Holst: June 18, 1936.

Mr. Harris: Here it is.

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By Mr. von Holst:

Q. —which has been identified as a letter written to you by Stokley, as one of those that you produced. A. Yes.

Q. Now, in that letter, about in the middle of the first page, it says:

"I have nearly $300 due me from stores I shall send on interest Saturday to you."

Now, there he is telling you, is he not, that he is going to send on interest on Saturday? A. Yes.

Q. On June 18th, 1936? A. Yes.

6233 Q. Now, according to Exhibit 112 he didn't pay any interest on the four thousand dollar loan until February 9, 1937, isn't that right? A. That is right.

Q. And—— A. And when the check came it wasn't designated for interest.

Q. On June 22, 1936, according to Amici Exhibit 112, he sent on $200? A. That is right.

Q. Which you credited to principal? A. That is right.

Q. Now, when Stokley wrote this letter of June 18th, 1936, there was no interest due on his four thousand dollar loan, was there? A. No.

Q. Isn't it evident that what he was talking about was
6234 the interest that was then past due on his Kaufman loan? A. Well, it wasn't evident to me, because I wasn't Kaufman's agent and had nothing to do with collection of Kaufman's transactions with him. If he had sent me a letter and said, "I wish you would transmit this to Mr. Kaufman," I would have done it.

Q. And your best recollection is that he, aside from this letter that I have just shown you, June 18, 1936, he sent you no accompanying letter with that remittance that you have entered on June 22, 1936, on Amici Exhibit 112? A. If so, I do not recall it. You have all——

Q. You have been unable to find it? A. I have been unable to find it. I have looked through everything I have, and I submitted to Mr. Harlan everything I had, there wasn't any question about these payments at that time and who they were for, and he photostated all of them and gave them over to the F. B. I. and to the United States Attorney. If there was, there would have been no point in saying they were on interest.

I might make a further statement. Stokley is an honest, hard-working fellow, greatly interested in church and things of that kind. I was glad to see Stokley have a chance to 6236
regain his life's savings, and I was better to Stokley and proposed to be better to Stokley than he expected me to be. That is why I applied them to principal rather than interest, and I would have done that same thing for anybody else in similar circumstances.

Q. I think you have answered this question once, Judge Davis, you will pardon me for asking it again,—— A. Sure.

Q. —because there seems to be some doubt as to whether it was asked. A. Sure.

Q. This personal accounts book that you have produced this morning, do you yourself of your own knowledge know when these entries on page 21 were made, when they were entered in the book. A. No, I do not. 6237

Mr. von Holst: Now, if the Master please,——

The Witness: I assume that they were entered as of the time that they are dated, and I am dead sure they were.

By Mr. von Holst:

Q. But, Judge, I call your attention again to this letter which you say that you assume you wrote, March 3, 1939, Amici Exhibit 207, which you say you assume you wrote to Charles L. Stokley, and the last paragraph says:

6238

"If you will keep the record of this payment with the other payments made, when I am down there in the near future, we will go over them and make a statement of all of your payments,——

A. Yes.

Q. "so there may be no misunderstanding about them in the future."

A. Yes.

Q. Now, if this memorandum book, page 21, had been in
6239 existence at that time what need would there have been to go over your payments and make a statement of all the payments? A. There would have been no need, only I wanted him to be satisfied and I wanted him to know that no payment had been made for which he had not been given credit, and so when his son was up, who is probably a better business man, and a college graduate, than his father, and looked after his father's business, after he graduated and went home, when he was up, why, a copy of the account so far was given to him, as had been—so far as had been paid, was given to him.

Mr. von Holst: If the Master please, I think that
6240 is all the interrogation we have of Judge Davis, but we do suggest to the Master the propriety and desirability of calling Miss Kliesh, who made this record; and I would like to ask Judge Davis if you could ask Miss Kliesh to come down here tomorrow morning. We, of course, will pay her expenses.

The Witness: I will ask——

Mr. von Holst: In order to save us from another trip, and to try to get this thing concluded.

The Witness: I will ask if she can do that. She is employed by the Clerk, and some days she has to

go direct to Newark. I will ask her if—she goes over there on special occasions for special work in connection with the court, and I will ask her to come down, and she will be glad to come down if there is nothing that holds her definitely what would be very detrimental to the processes there. If there is, she will come down any other convenient time.

Mr. von Holst: And I would also like to ask if the original documents that you produced here this morning which are in Miss Kliesh's handwriting, and that means the—— 6242

The Witness: Check books?

Mr. von Holst: —check books, and this thing here, this personal journal, could be left in Master White's possession until Miss Kliesh has had an opportunity to testify.

The Witness: I can leave all very conveniently with the exception of that book, and she will bring that down with her tomorrow, for the reason that we have an engagement tonight to go over my income tax return and I need that book for that purpose, but it will be here tomorrow when she comes.

Will that be satisfactory, Mr. White? 6243

The Master: The book has current entries in it, does it?

The Witness: Oh, yes, all the entries. I can't make up or do anything on my income tax return without that book.

The Master: Well, is that agreeable to you, Mr. von Holst?

Mr. von Holst: Yes, that is agreeable.

The Master: All right.

Mr. Harris: When will we know whether we have to come down again tomorrow?

The Master: Can't you telephone her?

The Witness: Yes, I can telephone her.

Mr. Harris: And let us know, if you can, before four o'clock.

The Witness: I can telephone right now, if she hasn't gone out to lunch.

The Master: Do you have any cross-examination Mr. Harris?

Mr. Harris: None, except one question, I believe, Mr. White.

6245

Recross Examination by Mr. Harris:

Q. The $320 interest, was that, the check of Mr. Stokley for that, deposited possibly in your wife's account, do you recall? A. I do not recall.

Q. I simply have a memorandum here from the United States Attorney's office indicating that it was deposited in the Pennsylvania Company for Insurances on Lives. A. That might be. I do not recall.

Q. You don't have any record of it being deposited in your own account? A. No, and I do give her a little money
6246 once in a while.

Q. Sure. Well, that wouldn't be contrary to your recollection? A. No, it would not. I do not have any recollection about it, Mr. Harris.

Mr. Harris: All right, that is all, Mr. White, and Judge Davis.

Mr. von Holst: Could you call Miss Kliesh now,—

The Witness: Yes.

Mr. von Holst: —before we adjourn, Judge?

The Witness: Yes.

(Discussion off the record.)

The Witness: These books I leave with you and you will give them to Miss Kliesh, so she can bring them up to me.

Mr. Harris: Mr. White, I would like to ask permission to have the records of the two criminal trials be deemed constructively before the Court, for one purpose only. You will recall that the trial judge, in instructing the jury in one case, one of the trials, 6248
instructed them to the effect that the Stokley loan appeared to be a legitimate business transaction, and I would like to be able to call that to the attention of yourself and the Circuit Court of Appeals, and, therefore, to have that evidence deemed before you, merely for the purpose of identifying what was before the Court, not for the purpose of introducing any of that evidence as proof in this case, but merely to show on what basis the trial judge made that charge to the jury, and whatever the charge was in the other case. As I recall it, the trial judge said he admitted that testimony only for the purpose of showing association between Mr. Kaufman and Judge Davis, and 6249
I think it is a fair argument for us to make that another judge has considered the matter and has regarded it as a legitimate transaction.

Now, to the extent that the evidence here goes beyond the evidence before the trial court, naturally, the other side have an argument per contra.

May we have that understood if that is agreeable to Mr. von Holst?

The Master: Any objection?

Mr. von Holst: Of course, I don't view it as material or relevant at all in the case, because I don't

6250 *Colloquy*

see what the judge's instructions in a criminal case, on the evidence then before the jury, would have to do, or have any bearing at all upon these proceedings. Maybe my argument is on the weight rather than the relevancy.

The Master: Well, Mr. Harris wants to get on the record the character of the decision, really, that was made by that judge.

Mr. Harris: That is right.

The Master: And, of course, he will cite it——

6251 Mr. Harris: As *stare decisis*.

The Master: —as persuasive.

Mr. Haris: It might be persuasive, that is right.

Mr. von Holst: If the Master please, of course, the importance and relevancy of that remark, or the meaning of that instruction to the jury depend directly upon the testimony that was before the Court in those proceedings.

Mr. Harris: That is what I said.

The Master: That is what Mr. Harris says. I mean, he suggests that he would be able to point out to what extent that testimony corresponded with this,

6252 and you could point out to what extent the testimony before me went beyond that which was before the Court.

Mr. Harris: I am not at all suggesting that the testimony in the two criminal trials be deemed to be proof in this proceeding at all, but merely to identify the evidence which was before the Court upon which he determined to make that charge. It is an argument that I think we are entitled to make as possibly being persuasive with this Court.